

Termination of Employment under the Slovak Legislation¹

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Abstract: *The study represents an outline of the ways of employment termination under the Slovak labour law (agreement on termination of employment relationship, notice by the employee, notice by the employer, immediate termination of employment, termination of employment within a probationary period). In particular, it focuses on the problematic part of legislation (e.g. termination of employment by the employer for the breach of labour discipline and dismissal by the employer due to employee's redundancy) and on the claims arising from an invalid termination of employment.*

Key Words: *Labour Law; Labour Code; Termination of Employment; Agreement on the Termination of the Employment Relationship; Notice by the Employee; Notice by the Employer; Immediate Termination of Employment; Termination of Employment within a Probationary Period; Claims Arising from Invalid Termination of Employment; the Slovak Republic.*

Termination of employment represents a significant intervention not only in the position of the employer but also of the employee. In order to maintain the protective function of labour law, an increased attention is paid on the protection of the employee as she/he is the weaker party to the employment relationship.²

According to the Article 36 of the Constitution of the Slovak Republic, employees are entitled to fair and satisfactory working conditions and

¹ 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.

² Compare with BARINKOVÁ, M. Nad skončením pracovného pomeru so zamestnancami so zodpovednosťou za rodinu v Slovenskej a Poľskej republike [On Termination of Employment Relationship with Employees with Family Responsibilities in Slovakia and Poland]. *Právni rozhledy*. 2006, roč. 14, č. 7, p. 247 and following. ISSN 1210-6410.

the law should provide them particular protection against an arbitrary dismissal and discrimination at work. In conjunction with the Article 51 of the Constitution a person may claim rights under the Article 36 of the Constitution only within the acts implementing these provisions. The act governing the termination of employment is the Act No. 311/2001 Coll. the Labour Code, as amended (hereinafter referred to as “the Labour Code”).

The question on what can be perceived as protection against arbitrary termination of employment (not protection against the termination of employment as such) was addressed by the Constitutional Court of the Slovak Republic. In its Resolution Ref. No. IV. ÚS 150/03-41 the Court states that “according to Art. 36 (b) of the Constitution, employees have the right to fair and satisfactory working conditions. The law shall ensure particular protection against an arbitrary dismissal and discrimination at work. However, the protection against arbitrary dismissal, in the opinion of the Constitutional Court, is not the finality of such an employment or similar legal relationship, nor it is a prohibition of its termination, if it is terminated in accordance with constitutional and legal limits for such a procedure of the employers. Such guarantees cannot be derived from the content of this fundamental right and, in fact, these guarantees would also be against the spirit of this fundamental right. Protection against an arbitrary dismissal is provided by general courts and other authorities of the legal protection.”³

Termination of the employment relationship is, therefore, possible based on the ways listed exhaustively in the Section 59 of the Labour Code and on the basis of a legal act (agreement, notice, immediate termination, termination within the probationary period) or on the basis of a legal event (employment concluded for a fixed period shall expire at the end of the agreed period). The termination of employment of an alien (third countries) or of a stateless person is provided for in a special legislation. Their employment relationship shall terminate on the date when their stay on the territory of the Slovak Republic ends, based on an enforceable decision to withdraw a residence permit, or when there enters into force a final resolution imposing for such a person expulsion from the Slovak Republic or the period for which the authorization was issued

³ Resolution of the Constitutional Court of the Slovak Republic Ref. No. IV. ÚS 150/03-41 [2003-08-27].

to stay in the Slovak Republic has elapsed (it is not necessary to perform any act, as the employment ends automatically).

In the event of a death of an employee, this means a termination of employment relationship. A new way of termination of the employment relationship exists under the law and according to the Section 58 (7) of the Labour Code⁴ (which also creates employment of a temporarily assigned employee to the user employer and under the law the employment relationship with the employer who assigned the employee ends, but not in accordance with the law).

In addition to the conditions for termination of employment provided for in the Labour Code (e.g. forms⁵ of the delivery or various substantive conditions, for example in the case of a dismissal due to organizational reasons, it is the obligation to offer a suitable job position according to the Section 63 (2) of the Labour Code), in the case of termination of employment under a legal act it is necessary for the valid termination of employment to meet the requirements of a legal act in general (a legal act should be concrete, comprehensible, in accordance with the law, etc.). Particulars of a legal act are provided for in the Civil Code – in its general part (Act No. 40/1964 Coll. the Civil Code, as amended), which is also used as an alternative to the first, general part of the Labour Code⁶ (in this section is also enshrined the legislation on legal acts).

⁴ If an employee is temporarily assigned contrary to the Section 58 (6) in the first or second sentence, there happens termination of employment relationship between the employee and the employer or temporary employment agency and there is created an employment for an indefinite period between the employee and the user employer.

⁵ E.g. the Section 17 of the *Act No. 311/2001 Coll. Labour Code, as amended*: (1) A legal action whereby an employee disclaims his/her rights in advance shall be invalid. (2) A legal action for which prescribed consent has not been granted by a competent authority or legal representative or for which the prescribed consent of the employees' representatives was not granted, a legal action that was not negotiated with the employees' representatives beforehand, or a legal action not executed in the expression as stipulated by this Act, shall be deemed void only if so expressly stipulated by this Act or by special regulation. (3) Invalidity of a legal action may not be to the detriment of an employee, unless the invalidity was caused by himself/herself alone. If an employee sustains damage as a result of an invalid legal action, the employer shall be obliged to provide indemnification for it.

⁶ According to the Section 1 (4) of the Labour Code, unless stipulated otherwise by the part one of the Labour Code, the general provisions of the Civil Code shall apply to individual and collective legal relations according to the Section 1 (1) of the Labour Code.

Agreement on termination of employment

In practice, the agreement on termination of employment is considered as a simple and seamless method of termination of employment. According to the Section 60 of the Labour Code, the termination agreement should be concluded in writing; however, if it is agreed orally, such an agreement is also valid. Employment shall terminate under the agreement on the date on which the employer and employee agreed.

However, the agreement must include the reasons why the parties decided to terminate the employment relationship and it is in the case when the employee requests that these reasons be given or when the employment ends for organizational reasons or for the employee's disability.

Notice (dismissal)

It can be stated that in addition to the agreement the most commonly used employment termination method is the notice of dismissal. Termination of employment by notice can be realized by the employer and also by the employee. While the employee may terminate the employment by notice for any reason or without giving a reason (Section 67 of the Labour Code), the employer, subject to the protective function of labour law, may give notice to an employee only for reasons which are exhaustively stipulated by the Labour Code in the Section 63 (1). In general, the reasons for the termination of employment by the employer can be divided into reasons relating to the employer's entity – the so-called organizational reasons, and reasons relating to an individual worker. The notice reason must exist at the time of termination of the employment, i.e. on the date of delivery of the notice (not as an afterthought).

In the case of a notice, the employment relationship terminates only after the expiry of the notice period, not by its delivery. The notice period starts from the first day of the calendar month following the delivery of notice and ends on the last day of the corresponding calendar month.

The notice period lasts at least one month, unless otherwise stated. The notice period lasts at least two months if the employment of an employee on the date of delivery of the notice has lasted at least one year. The notice period of the employee to whom the employer gives a notice on the grounds listed in the Section 63 (1) a) or b) or because the employee has lost medical fitness in the long term to perform the current job according to medical opinion lasts at least three months if the em-

ployment of an employee at the employer's on the date of delivery of the notice has lasted at least five years. A longer notice period may be agreed in the employment contract or collective agreement (possibly, in an agreement with the employee).

The employer may give notice to an employee only for the following reasons: if

- a) the employer or part thereof
 1. *ceases to exist* or
 2. *relocates* and the employee disagrees with the change of the agreed place of work,
- b) *the employee becomes redundant* in view of the written decision of the employer or of the competent authority due to the change of the employer's tasks, technical facilities, or staff reduction in order to ensure the effectiveness of the work or due to other organizational changes (and the employer which is a temporary employment agency, even if the employee becomes redundant with respect to the termination of the temporary assignment pursuant to the Section 58 of the Labour Code before the expiry of the period for which the employment for a fixed period of time was concluded; the legislation on this notice reason is effective from September 1st, 2015),⁷
- c) *the employee due to her/his health condition, according to medical opinion, lost the ability to perform previous work for long term, or she/he is not allowed to perform it for occupational disease or risk for the disease, or if she/he has reached the maximum permissible exposure at the workplace determined by decision of a competent public health authority,*
- d) employee

⁷ From March 1st, 2015, in the case when the employment with an agency for a fixed period is concluded, it is necessary to define the duration of employment by a specific date. If there is a premature termination of the temporary assignment before the expiry of the fixed period, the employee is no longer assigned, but his/her employment lasts until the expiry of the concluded period. If a temporary employment agency does not have available another work for the employee, it can apply this notice reason. For this notice reason there applies the same legislation as for other notice reasons, with the exception that in the event of such an employment termination there shall not apply the obligation to offer another job position under the Section 63 (2) of the Act No. 311/2001 Coll. Labour Code, as amended.

1. *does not meet the requirements* stipulated by regulations for the performance of the agreed work (they are determined by generally binding legal regulations which may change in the course of the employment at any time. If the employee, when concluding the employment, was qualified for the performance of the agreed work, there can be a situation when after some period of time there has occurred a change of legislation and the employee ceases to meet the requirements for the performance of the agreed work. This may be a precondition for achieving a qualification, skills, or having a certain length of professional experience),⁸
 2. no longer meets the requirements under the Section 42 (2) of the Labour Code,
 3. without fault of the employer does not meet the requirements for the proper performance of the agreed work which were stated by the employer in an internal regulation (requirements for a proper performance of work differentiate from the prerequisites for the performance of work by their sources of law, but also by the fact that the conditions are set for the type of work that the employee has agreed in the employment contract, while the requirements apply to the concrete work task carried out within the agreed type of work. Thanks to this narrower definition of requirements the employer can control the work process in accordance with the concrete and actual conditions.⁹ The employer's will to set requirements for the performance of work is not unlimited. The employer must proceed in accordance with the principle of adequacy and the requirements should be set so that they are justifiable and legitimate for the particular job),
 4. *does not complete the work task in a satisfactory way* and the employer has required him in writing in the last six months to remove this deficiency and the employee has not removed it within a reasonable time,
- e) there are certain reasons for the employee for which the employer could immediately terminate the employment or for a *less serious breach of labour discipline*; it is possible to give notice to an employee

⁸ Compare with BARANCOVÁ, H. *Zákonník práce: Komentár* [The Labour Code: Commentary]. 1. vyd. Praha: C. H. Beck, 2010, p. 293. ISBN 978-80-7400-172-7.

⁹ BĚLINA, M. et al. *Zákonník práce: Komentár* [The Labour Code: Commentary]. 1. vyd. Praha: C. H. Beck, 2008, p. 201. ISBN 978-80-7179-607-7.

for a less serious breach of labour discipline when she/he has been informed about the possibility of dismissal in respect of the violation of labour discipline in writing in the last six months.

Notice must be *in writing, delivered* to the other party to the employment relationship (to the employee in person)¹⁰ and *the notice of dismissal by the employer must contain factually defined reason for termination*, stated in such a way as to be unmistakable (the reason cannot be subsequently amended), otherwise it is invalid.

The Labour Code also contains other conditions of validity of notice by the employer (i.e. the substantive requirements) that the employer must fulfil. If these conditions are not met, the employer's dismissal is invalid. Under the Section 74 of the Labour Code, the employer's notice must be firstly consulted with employees' representatives (if they operate at the employer; if not, the employer has no obligation to consult it). If an employer wants to make an employee redundant and this employee is at the same time the representative of employees, the employer is obliged for termination – pursuant to the Section 240 (9) of the Labour Code – to have a consent of representatives of employees (the employees' representatives are protected in such a way not only during the duration of employment, but also a half year after the end of their term of office). Notice of employer may be given to persons with disabilities only after prior approval of the Office of Labour, Social Affairs, and Family (Section 66 of the Labour Code).

The employer is obliged to offer the employee *another suitable job position* according to the Section 63 (2) of the Labour Code, before giving notice to an employee. The obligation to offer a suitable job does not apply for the employer if the employer gives notice because of unsatisfacto-

¹⁰ Written documents of the employer concerning the establishing, change, and termination of an employment relationship or the establishing, change, and termination of an employee's obligations arising from an employment contract must be delivered to the employee in person. The employer shall deliver documents to the employee at the workplace, employee's place of residence, or anywhere where the employee shall be intercepted. Documents delivered by using a postal company shall be dispatched by the employer to the last known address of the employee, as recommended mail with advice of delivery and note "to his/her own hands". The obligation to deliver the document will be fulfilled as soon as the employee or the employer receives the document or when the postal office returns the document as undeliverable to the employer or employee, or if the delivery of the document has been thwarted by acts or omissions of the employee or employer. The effects of delivery shall also apply if the employee or the employer refuses to accept the document.

ry performance of the duties or due to a less serious breach of labour discipline, or on the grounds for which the employer may immediately terminate the employment. The offer of a suitable job is not necessary to proceed if the employer has no other suitable job position to offer to the employee (the employer is not obliged to create a new job position). If the employer is not able to continue to employ the employee, even on part-time in a place that was agreed as a place of work, or employee is not willing to switch to another suitable job – offered at the place which has been agreed as place of work, or the employee is not willing to attend the necessary preparation for this other job position, in these cases the employer does not have to meet this offer obligation.

The offered suitable job may be any work which is available at the employer. However, it must be a job for which the employee meets the medical requirements. The employer should take into consideration the fact that the other work should be suitable for the employee also from the point of view of his/her abilities and qualifications, but the job position does not have to match the complete employee's qualifications (the employer, thus, must offer also a job position that is actually several levels lower than the previous position and it can even be a worse paid job). Obviously, if it is required by the nature of the work, the employee must also comply with other requirements stipulated by the legislation or with the requirements of the employer.

According to the Section 64 (1) a) to e) of the Labour Code, the employer cannot give a notice to an employee within the so-called protected period (prohibition of notice), for example during employee's temporary incapacity for work, at the time when an employee is pregnant or on maternity leave, or when the employee is on parental leave or when employee – a single parent is caring for a child younger than three years, or at the time when the employee is released for a long time to exercise a public function.

The prohibition of notice does not apply absolutely, i.e. even if the employee is in the protected period his/her employer may give him/her the notice (Section 64 (3) of the Labour Code). An employee may decide to terminate the employment by notice at any time during the duration of employment.

The labour legislation always reacts to the situation in the market which is specifically related to the processes of restructuring enterprises.

The most frequent results of these processes are different organizational changes of the employer resulting in a reduction of staff.

According to the Section 63 (1) b) of the Labour Code, the employer can give a notice to the employee if she/he becomes redundant based on the written decision of the employer or of the competent authority on the change in her/his duties, technical equipment, or on the staff reductions in order to increase work efficiency, or on other organizational changes.

If there raises a need for the employer to change the organization of his/her activities, a situation may occur where the employer will no longer need the performance of work of certain employees and they become redundant for him/her. An employee is redundant for the employer not only when the employer does not longer need his/her agreed work performance, but also when he/she does not longer need the employee to perform a part of his/her job description¹¹ or only one of a number of previously performed tasks.¹² The performance of work of the redundant employee is no longer required, the employer has no work tasks for the employee, and therefore it is absolutely impossible to continue to employ the employee.¹³ The employer's inability to employ the employee should be interpreted also in a manner that while there was a decision by the employer on organizational change and the employer may assign work tasks to the employee, but due to the adoption of organizational change the employer does not need such work any longer it is the case of the employee's redundancy (the employee's job is unnecessary for the employer).¹⁴

¹¹ The Czech case law is interesting because it justifies dismissal of the employee due to his/her redundancy if a part of the employee's job duties is eliminated (the employee's workload will be reduced), provided that the employer has tried to agree with the employee on a change in working conditions, and if no agreement is reached nor the agreement on termination of employment is concluded then the employer may give a notice. Compare with *Resolution of the Supreme Court of the Czech Republic Ref. No. 21 Cdo 1322/2002* [2003-01-14]; *Resolution of the Supreme Court of the Czech Republic Ref. No. 21 Cdo 1573/2004* [2005-02-15]; and *Resolution of the Supreme Court of the Czech Republic Ref. No. 21 Cdo 1770/2002*.

¹² BĚLINA, M. et al. *Zákoník práce: Komentář* [The Labour Code: Commentary]. 1. vyd. Praha: C. H. Beck, 2008, p. 196. ISBN 978-80-7179-607-7; and R 42/1982.

¹³ R 51/1997. In: *Zákoník práce s judikaturou* [The Labour Code with Case-Law]. 2. vyd. Bratislava: Iura Edition, 2009, p. 246. ISBN 978-80-8078-250-4.

¹⁴ Compare with *Resolution of the Supreme Court of the Czech Republic Ref. No. 21 Cdo 4535/2007* [2008-12-11].

In order to exercise the notice reason – the employee’s redundancy, the employer must meet specified conditions:¹⁵

- ✚ the employer must adopt a written decision on organizational change, i.e. decision on a change of the employer’s roles, his/her facilities, the staff reductions in order to increase work efficiency, or other organizational changes,
- ✚ the employee’s redundancy, and
- ✚ a causal relationship between the decision on organizational change and the employee’s redundancy.

Selection of a redundant employee is at the discretion of the employer. In accordance with the existing relevant case-law on the selection of redundant employee the decision is made solely by the employer. In a possible lawsuit the court does not examine the selection of a redundant employee. The court only examines whether there was an organizational change and whether in its consequence the employee became redundant.¹⁶

In addition to the employee’s redundancy, there is used in practice another notice reason – *breach of labour discipline*. According to the Section 63 (1) e) of the Labour Code, the employer may give notice to an employee if there are reasons for which the employer could terminate the employment immediately with the employee¹⁷ or for less serious breach of labour discipline. The employer can give notice to the employee for less serious breach of labour discipline if the employee has been made aware in writing of the possibility of employment termination in relation with breach of labour discipline in the past six months.

The mentioned provision, thus, contains two reasons for the employment termination in relation to labour discipline. The first notice reason represents a legal situation when an employee seriously violates labour discipline and the employer may decide whether to give a notice to an employee or to terminate their employment relationship immedi-

¹⁵ BĚLINA, M. et al. *Zákoník práce: Komentář* [The Labour Code: Commentary]. 1. vyd. Praha: C. H. Beck, 2008, p. 194. ISBN 978-80-7179-607-7.

¹⁶ *Resolution of the District Court of Brno Ref. No. 7 Co 612/66* [1967-01-03]; *R 90/1967; Resolution of the Supreme Court of the Czech Republic Ref. No. 21 Cdo 4535/2007* [2008-12-11]; and *Resolution of the Supreme Court of the Czech Republic Ref. No. 21 Cdo 172/2007* [2007-11-20].

¹⁷ An employer may terminate an employment relationship exceptionally, only in cases where the employee a) was lawfully sentenced for committing a willful offence; b) was in serious breach of labour discipline.

ately. The second reason for the notice can occur when the employee violated labour discipline in a less serious manner. If an employer wants to terminate employment with such employee for this reason, after the first breach of labour discipline she/he must inform the employee in writing that if in the next six months the employee will repeat to violate the labour discipline (i.e. the employee violates the same or other obligation in a less serious manner), the employee will be given a notice (the employee may be given a notice after two less serious breaches of labour discipline).

If the employer wishes to give notice to an employee for misconduct in labour discipline, the employer is obliged to inform the employee of the reason for employment termination and to allow him/her to give his/her opinion on this reason.

The degree of intensity of misconduct in labour discipline is evaluated by the employer depending on the particular circumstances in which the employee violated labour discipline. In determining the intensity the employer should take into account the personality of the employee, his/her function, his/her present attitude to the work tasks in time and situation in which there has been a breach of discipline, the degree of the employee's fault, the manner and intensity of the violation of the employee's concrete obligations, the consequences of misconduct for the employer; the employer should also consider whether the employee's conduct caused the damage and at the same time it is necessary to take into account the specific circumstances for the employer (i.e. the established habits at the employer, e.g. to which extent is tolerated a certain breach of labour discipline, etc.).¹⁸ However, in the event of litigation, only the court is finally entitled to decide on the seriousness of the misconduct. Many employers establish in their internal rules (especially in the staff regulations) which breaches of work duties will be evaluated as serious and which as a less serious labour misconduct.

As mentioned above, it is necessary to examine the particular circumstances of each breach of work duties, and although the employer has defined in his/her internal regulations which breach of professional duties is considered as serious and which as less serious, these regulations should be taken into account only as a certain "guide", recommen-

¹⁸ *Resolution of the Supreme Court of the Czech Republic Ref. No. 21 Cdo 1252/2002* [2003-01-21]; and *Resolution of the Supreme Court of the Czech Republic Ref. No. 21 Cdo 414/2001*.

dation, and information for employees. In a possible lawsuit such an internal regulation is not binding for the court and the court may evaluate the seriousness of the misconduct differently from the employer in his/her internal regulations (it is, therefore, not appropriate to “generalize” any breach of labour discipline).

The employer must *prove that the employee is culpable of the misconduct*, to be able to apply the notice reason – breach of labour discipline. The employer must demonstrate that the employee violated his/her obligations, either intentionally or at least negligently.

In general, the minor violations are, for example, arriving late to work or leaving early, failure to notify obstacles to work on time to the employer if that employee knew about these obstacles in advance, a short term leaving from work without the consent of the employer, failure to comply with deadline of certain work tasks (of course, it is necessary to take into account the seriousness of the concrete work task), smoking in the workplace (unless there is not immediately endangered the safety at work), etc. Serious misconduct in labour discipline is, for example, a proven having, use, and serving of alcohol beverages or other intoxicating substances in the workplace and the employee’s refusal of breath test for alcohol consumption, and rejection to take tests for the presence of narcotics and psychotropic substances, theft (of personal belongings of other employees and the things that are the property of the employer), or the use of the employer’s assets for private purposes.

To maintain the principle of legal certainty, the Labour Code in its Section 63 (4) allows an employer to give notice to an employee for misconduct only within two months from the date when she/he learned about the grounds for the employment termination (the so-called subjective time), no later than one year from the date when the cause of dismissal arose (the so-called objective time).

In practice the breach of labour discipline is often mistaken with the notice reason – the *unsatisfactory performance of work tasks*. In the case of unsatisfactory performance of work tasks it is an objective impossibility of the employee to perform the work tasks to the satisfaction of the employer; the employee does not violate labour obligations, but is not able to “work in high quality”. The employer does not need to prove the fault of the employee as it is in the case of misconduct (there is no need to prove that the employee willfully or negligently fails to comply with satisfactory performance of work tasks. Let us demonstrate a concrete

situation: The employee must i.e. produce 12 products per day according to a norm, she/he does not infringe any obligation, but simply cannot follow the production pace and cannot produce the required number of products). It should be noted that there may be situations when an employee simultaneously cannot perform job duties in a satisfactory manner and at the same time violates the labour discipline.

The employer may apply this notice reason only after the employee has been informed of the unsatisfactory performance of work tasks and yet the alleged deficiencies are not remedied. The information on unsatisfactory fulfilment of work tasks by the employer must be in writing. At the same time, the employer must provide the employee with a reasonable period during which the employee has the opportunity to improve his/her work performance. Only after these conditions are fulfilled the employer can give an employee a notice.

The employer can be unsatisfied with the employee's performance of work for a long time (for dismissal on grounds of misconduct in labour discipline it is important to respect the objective and subjective deadlines), but if the employer wants to apply to an employee a notice for unsatisfactory performance of work tasks, she/he can do so if she/he has previously called upon the employee for elimination of deficiencies in the last six months and the employee did not mitigate them within a reasonable time.

Immediate termination of employment

In situations deserving a special consideration when working conditions are so unfavourable that it is not acceptable for the party to the employment relationship to continue in employment it is possible to terminate such an employment immediately.

As it is clear from the very concept of "the immediate termination of employment", the employment relationship shall terminate immediately, i.e. in the moment of delivery of immediate termination of employment to the other participant of employment. An essential differentiating feature of immediate termination of employment, as opposed to dismissal, is the fact that the immediate termination of employment is conceptually not related with the notice period.

The employer as well as the employee, both can immediately terminate the employment, but only on *the grounds exhaustively listed* in the Labour Code, while the immediate termination of employment by the

employer is considered to be an exceptional method of termination of employment.

In order to make the immediate termination of employment applicable, we must comply with all the requirements of a legal act in general as well as with the requirements contained in the Section 70 of the Labour Code under which the immediate termination of employment must be *in writing* and must contain a *factually defined reason* so that it cannot be confused with another reason (which shall not be subsequently amended), and must be received by the other party within the prescribed period, otherwise it is invalid. If at the employer's there are *the employees' representatives*, the validity of the immediate termination of employment by the employer requires their participation under the Sections 74 and 240 (9) of the Labour Code (as in case of a dismissal).

The employer may terminate employment only *within two months* from the date when the employer became familiar with the reason for immediate termination, but no later than one year from the date when this reason occurred. An employee may immediately terminate the employment only within one month from the date when she/he became familiar with the reason for immediate termination of the employment relationship.

The employer may, exceptionally, immediately terminate the employment only if there are any of the following reasons:

- ✚ if an employee has been *finally convicted of an intentional crime* (there is necessary final conviction; only the fact that the employee is charged with a crime or remanded in custody is not sufficient), or
- ✚ if the employee has *seriously breached the labour discipline*.

Given the fact that the immediate termination of employment is an exceptional way of termination of employment, the Labour Code in the Section 68 (3) provides for an exhaustive *list of categories of employees with whom the employer cannot terminate employment immediately* (e.g. pregnant employee, male/female employee on parental leave, employee who is personally caring for a close person, who is a person with a severe disability).

An employee may immediately terminate the employment if there are the following reasons (if his/her employer violates certain obligations):

- ✚ if the employee, according to *medical opinion*, can no longer perform work without a serious threat to his/her health and the employer did

- not transfer him/her to another appropriate work *within 15 days from the date of submission of this report*,
- ✚ if the employer *did not pay to the employee* remuneration, wage compensation, travel expenses, compensation for standby duty, reimbursement for temporary sick leave, or any part thereof *within 15 days after the due date*,
 - ✚ if the employee's *health or life is directly endangered*,
 - ✚ a *juvenile employee* can immediately terminate the employment also if she/he cannot perform her/his work without *risk to her/his moral values*.

Given the fact that the employee usually terminates the employment immediately when she/he encounters herself/himself in an existential threat, according to the Section 69 (4) of the Labour Code she/he is entitled to wage compensation in the nature of a certain satisfaction and in the amount of an average wage for the notice period of two months. In this case the employee has terminated the employment because there was such a compelling reason; she/he could not terminate the employment relationship in another way, for example by a dismissal.¹⁹

Termination of employment within the probationary period

If one of the parties to the employment relationship does not want to continue in employment during the time of the probationary period, the employment can be easily terminated without legal restrictions. According to the Section 72 (1) of the Labour Code it is sufficient for the termination of employment if one of the parties to the employment relationship shall notify the other party that it has terminated the employment within a probationary period.

Within the probationary period the employment relationship may be terminated by the employer as well as by the employee and for any reason or no reason, without requiring the consent of the other party to the employment relationship. Pursuant to the Section 72 of the Labour Code there is only required that the written notice of termination of employment be received by the other party to the employment relationship at least three days before the employment relationship is terminated. This written notice must be delivered to the other party, i.e. it is necessary to make it accessible to its recipient.

¹⁹ Compare with BARANCOVÁ, H. *Zákonník práce: Komentár* [The Labour Code: Commentary]. 1. vyd. Praha: C. H. Beck, 2010, p. 321. ISBN 978-80-7400-172-7.

However, if the notice is not realized in a written form and the notice is not received within the prescribed period, the termination of employment is still valid because the Labour Code does not penalize the non-compliance with these requirements with invalidity. Although in this case the termination of employment within a probationary period is valid, the participant of employment violated the Labour Code, and additionally, the employer might be penalized for violation of labour legislation.

Notably, in the case of a pregnant female employee, a female employee up until the end of the ninth month after the birth, or a breast-feeding employee employment termination in a probationary period is possible only in exceptional circumstances and for grounds not connected with the maternity. In addition, the employment termination of such a female employee must be stated in writing, otherwise it is not valid.

The disputes regarding invalid employment termination

In case of invalid termination of employment relationship by legal act – mutual agreement, during the probationary period or in case of immediate termination both parties, i.e. the employer and the employee have the right pursuant to the Sections 77 – 80 of the Labour Code to file *a court action within a two-month preclusive period claiming invalidity of termination of the employment relationship*.²⁰

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

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

If in case of an invalid notice given by the employer or in case of an invalid termination of the employment relationship by the employer with immediate effect or during the probationary period the employee notifies the employer that he/she is determined to continue being employed by him/her, his/her employment relationship continues and the employer is

²⁰ BARANCOVÁ, H. *Zákonník práce: Komentár* [The Labour Code: Commentary]. 1. vyd. Praha: C. H. Beck, 2010, p. 530 and following. ISBN 978-80-7400-172-7.

obliged to grant him/her a wage compensation if he/she does not assign work to the employee in accordance with his/her employment contract. *The employee is entitled to such compensation in the amount of average earnings from the date on which he/she notified the employer that he/she is determined to continue being employed by him/her until the time when the employer enables him/her to continue performing his/her work or until the time when the court rules on the termination of employment pursuant to the Section 79 of the Labour Code.*

If the total time for which the employee should provide wage compensation exceeds 12 months, the court may at the request of his/her employer to pay wages for time in excess of 12 months be reduced, possibly to be paid for time in excess of 12 months to deny the employee at all. Wage compensation can be awarded for a maximum time of 36 months.

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

If it is proven that an employment relationship was terminated unlawfully, the court determines in its decision – judgment – that the termination of the employment relationship is invalid and that the employment relationship continues.

Severance payment

According to the Section 76 of the Labour Code, the employee is entitled to severance pay if the employment relationship is terminated by: agreement for organizational reasons (Section 63 (1) a) of the Labour Code); redundancy (Section 63 (1) b) of the Labour Code); or for the long-term health incapacity of an employee according to a medical opinion. The minimal amount of severance pay in case of termination for organizational reasons and redundancy is a multiple of the employee's average monthly earnings and the number of months of the notice period.

If the employment is being terminated by the employer's notice, the employee is entitled to severance payment in the amount of his/her average monthly earnings if the employment has lasted at least 2 years and

less than 5 years, two average monthly earnings if the employment has lasted at least 5 years and less than 10 years, three average monthly earnings if the employment has lasted at least 10 years and less than 20 years, or four average monthly earnings if the employment has lasted more than 20 years.

If the employment is being terminated by mutual agreement of the employer and the employee, the employee is entitled to severance payment in the amount of his/her average monthly earnings if the employment has lasted less than 2 years, two average monthly earnings if the employment has lasted at least 2 years and less than 5 years, three average monthly earnings if the employment has lasted at least 5 years and less than 10 years, four average monthly earnings if the employment has lasted at least 10 years and less than 20 years, or five average monthly earnings if the employment has lasted more than 20 years.

If the employment relationship is terminated by an agreement or by notice for health reasons connected with work (i.e. a work-related injury or occupational disease), the employee is entitled to an amount of at least ten times the average monthly wage. The employer may also provide the employee with severance pay in cases other than those mentioned above.

A higher compensation for dismissal can be agreed in the employment contract or in the collective agreement, or in other agreement with the employee (but the principle of equal treatment should be respected).

Summary

Termination of employment is extremely radical intervention into the legal status of the employee and of the employer. The Labour Code governs the termination of employment (agreement on the termination of the employment relationship, notice by the employee, notice by the employer, immediate termination of employment, termination of employment within a probationary period) as well as the claims arising from invalid termination of employment by several provisions. The constitutional basis of this legislation is the Article 36 of the Constitution of the Slovak Republic, pursuant to which employees are entitled to fair and satisfactory working conditions and the law should provide particular protection against the arbitrary dismissal and discrimination at work. The present study focuses specifically on the problematic part of the legislation – notice by the employer due to the breach of labour discipline and dismissal by the employer due to the employee's redundancy – and

on the related case law. At the same time it also highlights the claims arising from an invalid termination of employment. As a conclusion we can state that a key feature of the provisions of the Labour Code of the Slovak Republic on termination of employment remains the protection of employees in their position of the weaker party to an employment relationship.

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