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Termination of the employment relationship in Slovakia

Terminación de la relación laboral en Eslovaquia

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Abstract: Slovak labour law regulates the termination of employment in a rigid manner, based on the principle of protection of the employee as the weaker party in labour relations. The Labour code distinguishes four key types of terminating an employment relationship: I. Termination by agreement, II. Notice of termination, III. Immediate termination and IV. Termination within a probationary period. In addition to that, an employment relationship will also terminate upon the death of the employee and fixed-term employment will terminate upon expiry of the agreed period. Special provisions apply to termination of an employment relationship with a foreigner (or a stateless person) and in connection with temporary secondment. The legal regulation of termination of the employment relationship in Slovakia has been relatively stable in recent years, without major changes or serious proposals for radical amendment.

Resumen: *La legislación laboral eslovaca regula la terminación del contrato de trabajo de manera estricta, basándose en el principio de protección del empleado como la parte más débil en las relaciones laborales. El Código del Trabajo distingue cuatro tipos clave de finalización de la relación laboral: I. Terminación por acuerdo, II. Aviso de terminación, III. Terminación inmediata IV. Terminación dentro de un período de prueba. Además, la relación laboral también finalizará con el fallecimiento del empleado y el contrato de duración determinada terminará al expirar el período acordado. Por otra parte, se aplican disposiciones especiales en caso de terminación de una relación laboral con un extranjero (o apátrida) y en relación con la comisión de servicio temporal. La regulación legal de la terminación de la relación laboral en Eslovaquia se ha mantenido relativamente estable en los últimos años, sin cambios importantes ni propuestas serias de modificación radical.*

Keywords: Termination of employment, Slovak labour law, dismissal in Slovakia, notice of termination, immediate termination of employment.

Palabras clave: *Extinción de la relación laboral, legislación laboral eslovaca, despido en Eslovaquia, aviso de terminación, finalización inmediata de la relación laboral.*

I. Introduction

The legal regulation of employment relations in Slovakia is governed primarily by the Labor Code from 2001[1], which replaced the original (Czechoslovak) Labour Code from 1965[2]. The Labour Code naturally reflects the limits set by international law, EU law and the Slovak Constitution[3]. Slovak republic is bound by the ILO Convention No. 158 on Termination of Employment, even though it ratified the convention only in 2010. In terms of EU secondary legislation, the Directive on Collective redundancies comes to the fore as impacting the

1 Act No. 311/2001 Coll. of 2 July 2001, the Labour Code, as amended. The Labour Code entered into effect on 1st April 2002, with the exception of Sec. 5 par. 2 to 5, and Sec. 241 to Sec. 250, which entered into effect upon accession of the Slovak Republic to the European Union.

2 Act No. 65/1965 Coll. of 16. June 1965, the Labour Code, as amended. The act entered into effect on 1 January 1966.

3 Act No. 460/1992 Coll. of 1. September 1992, Constitution of the Slovak Republic, as amended.

legal regulation of termination of employment. As regards Slovak Constitution, relevant for the termination of employment is in particular article 36 of the Constitution, which provides that employees have the right to fair and satisfactory conditions of work, including protection from arbitrary dismissal and discrimination at work. According to the Slovak Constitutional court, protection against arbitrary dismissal does not mean immutability of the employment relationship or prohibition to terminate the employment relationship in compliance with constitutional and legal limits[4]. The legal limits of terminating the employment relationship are defined by the Labour code, which sets out exhaustively the ways in which employment relationship may be terminated, stipulates the grounds for termination by mandatory rules and provides other conditions that have to be adhered to[5].

Ways of terminating an employment relationship are addressed in articles 59 – 63 of the Labour code. Slovak law distinguishes four explicit types of terminating an employment relationship in article 59 (1) of the Labour code: *i.* Termination by agreement, *ii.* Notice of termination, *iii.* Immediate termination and *iv.* Termination within a probationary period. Furthermore, employment relationship concluded for a fixed period will terminate upon expiry of the agreed period[6]. An employment relationship will logically also terminate upon the death of the employee[7]. Special provisions apply to termination of an employment relationship with a foreigner (or a stateless person)[8] and in connection with temporary secondment[9].

II. Agreement on termination of employment relationship

Termination of employment by agreement is described as the simplest and most common way of termination[10]. The Labour code does not set many conditions for this type of termination, employers therefore often tend to offer agreement also to employees who would otherwise be terminated by notice or by immediate termination.

The key conditions defined by the Labour code concern the form and content of the agreement. As regards the form, the agreement on termination of employment relationship must be concluded in writing[11]. However, if the agreement is not drawn up in the prescribed written form, it is not deemed invalid[12]. Oral agreement on termination of employment would thus still be considered valid, but the employer might be sanctioned by the Labour inspectorate for violating the provisions of the Labour code, requiring written form of the agreement[13].

4 Ruling of the Constitutional Court of the Slovak Republic No. IV. ÚS 150/03-41.
5 Olšovská, A. *Skončenie pracovného pomeru*. Second edition. Wolters Kluwer. Prague 2017, p. 33.
6 Art. 59 (2) and art. 71 of the Labour Code.
7 Art. 59 (4) of the Labour Code.
8 Art. 59 (3) of the Labour Code.
9 Art. 59 (5) of the Labour Code.
10 Olšovská, A. *Skončenie pracovného pomeru*. Second edition. Wolters Kluwer. Prague 2017, p. 41.
11 Art. 60 (2) of the Labour code.
12 Pursuant to art. 17 (2) of the Labour code, a legal action not executed in the required form shall be deemed invalid only if so expressly stipulated.
13 Olšovská, A. *Skončenie pracovného pomeru*. Second edition. Wolters Kluwer. Prague 2017, p. 41.

Concerning the contents, the agreement may include any provisions the parties consider relevant, such as arrangements concerning severance, leaving allowance or reimbursement of unused leave[14]. The reasons for termination must only be specified in the agreement if the employee so requests or if the employment relationship was terminated by agreement for so called organizational reasons[15] or if an employee can no longer carry out his/her job for health reasons[16].

If an employee and employer agree on the termination of the employment relationship, the employment relationship shall terminate upon the agreed day. The day of termination may be agreed upon in any manner which does not create doubt in determining the exact day of the termination. Hence, a specific date can be agreed, or the day of termination may be determined by referring to a certain event, such as completion of works, termination of employees' sick leave or retirement of the employee[17]. According to the ruling of the Czech Supreme Court, an agreement may designate as the day of termination of the employment relationship the day on which the agreement was signed or any following day, but not a day preceding the date of signature of the agreement[18].

Under art. 60 (3) of the Labour code the employer is obliged to issue the employee with one counterpart of the agreement on termination of the employment relationship.

III. Notice of termination of employment

Notice of termination is the default way of terminating the employment relationship on the basis of a unilateral legal act. The Labour code distinguishes between notice given by employer and notice given by employee. The key distinction concerns the permissible grounds for termination by notice. While an employee may resign for any reason or without stating any reason at all, an employer can only dismiss an employee for reasons explicitly stipulated in the Labour code. It should be noted however, that neither the Labour code, nor Slovak labour law jurisprudence make terminological distinction between resignation of an employee and dismissal of an employee by the employer — the proper terminology, which is rigorously adhered to, is notice given by employer or notice given by employee.

Regardless of which party gives the notice of termination, the notice must be given in writing and delivered to the other party. If one of these two condition was not fulfilled, the notice would be deemed invalid[19]. Written form requires the existence of a document and a

14 Olšovská, A. *Skončenie pracovného pomeru*. Second edition. Wolters Kluwer. Prague 2017, p. 42.

15 Art. 63 par. 1 (a) and (b) of the Labour Code. Wounding up or relocation of the employer or changes in internal organisation of the employer.

16 Art. 63 par. 1 (a) and (c) of the Labour Code.

17 R 5/1974.

18 Rulings of the Supreme Court of the Czech Republic No. 21 Cdo 29/98, No. 21 Cdo 2039/2012. Given the common origin and the continuing proximity of the legal regulations in Slovakia and the Czech republic, in lack of Slovak case law, authoritative Czech rulings is often used to aid the interpretation of Slovak legislation, even though these are in no way legally binding in Slovakia.

19 Article 61 (1) second sentence of the Labour code.

signature[20]. However, the form of the document, i.e. the medium on which the text is captured, is not decisive. It can thus be electronic or even handwritten. The key is that the document contains all the essential elements, required by the Labour code and that its form enables capturing the content of the legal act and determining the person who performed it[21]. Indeed the written form will be considered as complied with if an electronic document is signed with a certified electronic signature or a certified electronic seal.

According to art. 38 (1) of the Labour code, 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 out of an employment contract must be delivered to the employee only and in case of delivery by postal service, must be marked as '*personal*'[22].

The Labour code prefers service of documents drawn up by the employer to the employee in person — at the workplace, employee's place of residence, or anywhere where the employee could be reached. Provided that such a service is not possible, documents may be delivered via postal company as a registered mail.

The obligation of an employer or employee to deliver written documents is deemed to have been fulfilled once the employee or employer receive the documents, or once the postal company returned the documents to the sender as undeliverable. A document is considered delivered also if employee or employer, by their action or neglect, hampered the delivery of the documents or if the recipient refuses to take receipt of the document[23].

Once the notice of termination was delivered to the other party, it may only be revoked with their consent. Revocation of notice and the consent to its revocation shall be produced in writing.

3.1. Notice period

If one of the parties to the employment contract gives the other party notice of termination, the employment relationship will not terminate immediately (unlike in cases of immediate termination under art. 68 — 70 of the Labour code), but upon expiration of the period of notice. The default minimum length of the notice period is one month, but it might be extended depending on the grounds for termination as well as the length of the employment relationship.

Provided that the employment relationship lasted at least one year, the notice period extends to two months.

When notice if given by the employer for so called organizational reasons[24] or because an employee can no longer carry out his/her job for health reasons, the notice period will be at

20 Švec, M., Toman, J. Zákonník práce, Zákon o kolektívnom vyjednávaní — komentár. Second edition. Wolters Kluwer , Bratislava 2023. ISBN: 978-80-571-0584-8

21 Olšovská, A. *Skončenie pracovného pomeru*. Second edition. Wolters Kluwer, Prague 2017, p. 49.

22 This is a special type of postal service, used mainly by state authorities. The parcel has to be marked as „*Personal*", in Slovak „*Do vlastných rúk*", literally meaning „*into own hands*".

23 Article 38 (4) of the Labour code.

24 Art. 63 par. 1 (a) and (b) of the Labour Code. Wounding up or relocation of the employer or changes

least three months provided that the employment relationship lasted no less than five years. Employment contract or a collective labour agreement may provide for longer notice periods.

If the employee ceases to work before the end of the notice period, the employer is entitled to monetary compensation up to the amount of the employee's average monthly salary, multiplied by the length of the notice period. This is however the case only if such a compensation has been agreed in writing in the employment contract[25].

3.2. Notice of termination given by the employer (Dismissal)

An employer may give notice to an employee only based on one of the grounds exhaustively set out in the Labour code. The ground for the termination must be factually described in the termination notice in such a way that it cannot be confused with any other ground, otherwise the notice of termination is deemed invalid. One of the reasons for this is to prevent the employer from subsequently changing the ground for giving notice. The Supreme court of Slovakia ruled that the employer's legal qualification of the ground for giving notice is not decisive. Based on the factual description of the reasons for termination, it is upon the court to determine which of the legal grounds for dismissal was actually fulfilled[26].

The Labour Code specifies four statutory grounds for termination of employment by notice given by the employer: *(i.)* organisational reasons, *(ii.)* medical reasons on the employee's side, *(iii.)* failure to fulfil the prerequisites for carrying out the agreed work and *(iv.)* disciplinary grounds.

3.2.1. Dismissal for Organisational Reasons

The term referred to as "organisational reasons" in fact encompasses three distinct grounds for notice. First two grounds are articulated in art. 63 (1) a) of the Labour code: dissolution of the employer or a part thereof and relocation of the employer (or a part thereof), provided that the employee does not consent to the change of the agreed place of work.

Dissolution of an employer

The most obvious case of dissolution of an employer involves cessation of all its activities without any legal succession, accompanied by dissolution of the legal entity — winding up of a legal person or death of a natural person. This, however, does not always need to be the case. The employer may decide the lay off all employees since they are no longer needed or the employer can no longer afford to employ them, but the legal entity of the employer may still continue to exist (whether it be a legal or natural person). Dissolution of an employer needs to be interpreted with reference to the definition of an employer in art. 7 (1) of the Labour code, according to which employer is a legal or natural person who employs at least one natural person.

in internal organisation of the employer.

25 Under art. 62 (8) of the Labour code, the agreement on monetary compensation must be in writing, otherwise it is deemed null and void.

26 Ruling of the Supreme court of the Slovak republic No. 1 Cdo 124/2010.

As professor Olšovská points out, opinions differ as regards a situation when the employer lays off all employees but continues to conduct business[27]. Nevertheless, the majority view only considers the dissolution of an employer to be applicable as a ground for dismissal if all activities of the employer are ceased. Consequently, if the employer laid off all employees, but continued to operate without any employees, the appropriate ground for dismissal would be redundancy[28] (see below)[29].

Furthermore, the dissolution may also concern only a part of the employer. The ground for dismissal will be fulfilled in such a case if an organisational change takes place which entails the dissolution of an organisational unit and the employer ceases to carry out the activity which was previously conducted by the abolished unit[30].

Relocation of an employer

One of the essential elements of the employment contract, that the parties need to agree upon, is the place of work[31], which must be defined in a clear and comprehensible manner. It may be determined narrowly, as a specific address or more broadly, as a municipality or a district (or even the territory of two districts)[32]. The Labour Code expressly permits more than one place of work to be specified in an employment contract. Consequently, when the employer intends to relocate (part of) its activities to a new place, affected staff will have to agree to an amendment to the contract of employment concerning the place of work. Only when the employee does not consent to a change in the agreed place of work, may the employer invoke this ground for dismissal.

It should also be mentioned that relocation of the employer needs to be distinguished from a change of the employer's registered office, as they don't have to go hand in hand[33].

Redundancy

The third organisational ground lies in redundancy of an employee resulting from a change in the employer's tasks, technical equipment, a reduction in the number of staff or other organizational changes. This ground may only be invoked if a written decision exists of the employer or the competent authority on the relevant organisational changes that should be aimed at ensuring work efficiency. The organisational change does not need to involve staff reductions, on the contrary, there may be an increase in the number of employees, as the employer may intend to change the composition of the workforce in terms of professions and qualifications[34].

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27 Olšovská, A. ***Skončenie pracovného pomeru***. Second edition. Wolters Kluwer, Prague 2017, p. 62.

28 Art. 63 (1) b) of the Labour code.

29 Olšovská, A. ***Skončenie pracovného pomeru***. Second edition. Wolters Kluwer, Prague 2017, p. 62.

30 Decision of the Supreme court of the Slovak Republic No. 4 M Cdo 5/2010.

31 According to art. 43 (1) of the Labour code, essential elements, that must be stipulated in the employment contract are: *(i.)* type of work, *(ii.)* place of work, *(iii.)* starting day and *(iv.)* wage conditions.

32 Švec, M., Toman, J. Zákonník práce, Zákon o kolektívnom vyjednávaní — komentár. Second edition. Wolters Kluwer, Bratislava 2023.

33 Olšovská, A. ***Skončenie pracovného pomeru***. Second edition. Wolters Kluwer, Prague 2017, p. 66.

34 R 57/1968.

Employer who is a temporary work agency, may use this ground for dismissal also if employee becomes redundant as a result of early termination of his/her secondment before the expiry of the period for which the fixed-term contract of employment was concluded.

Slovak supreme court ruled that redundancy resulting from organisational change is characterised by the fact that the employer still can in theory assign work to the employee, but the employer does not need the employee's work anymore (not at all or in the original extent)[35]. Thus even an employee whose work will no longer be needed by the employer to the full extent originally agreed, or whose workload is only partly reduced may be made redundant[36].

As regard redundancy resulting from an organisational change, a distinction has to be made between the date of adoption of the decision on the organisational change and the entry into force of the organisational change itself[37]. The employer's decision on organisational changes is regarded by both jurisprudence[38] and the case law[39] as a factual event, not a legal act. Consequently, validity of this decision cannot be examined, nor can it be subject to judicial review[40]. However, it constitutes a material precondition for a dismissal.

The decision on the organisational change must be adopted before a notice of termination is given to an employee. The actual organisational change, however, cannot take effect before the end of the notice period. Otherwise, the employer will not be able to assign work to the employee during the notice period and so-called obstacle to work on the part of the employer will ensue, with employee being entitled to wage compensation[41].

On the other hand, if the organisational change took effect after the termination of the employment, it would contradict the very purpose of the whole change and result in the invalidity of the dismissal[42]. Therefore the organisational change should take effect the day following the expiry of the notice period.

As regards the selection of the redundant staff member, this is a matter of the employer's prerogative which is not, in principle, subject to judicial review[43]. However, if the claimant establishes factual circumstances which indicate the existence of discrimination by the employer in the selection of the claimant as redundant from among several employees, then the court is entitled to review the selection of the employee and the circumstances in which it occurred[44].

35 Decision of the Supreme Court of the Slovak Republic No. 4 Cdo 102/2009.
36 Olšovská, A. *Skončenie pracovného pomeru*. Second edition. Wolters Kluwer, Prague 2017, p. 67.
37 Olšovská, A. *Skončenie pracovného pomeru*. Second edition. Wolters Kluwer, Prague 2017, p. 60, 69.
38 Barancová, H. Zákonník práce. Komentár. Prague : C.H. Beck, 2010, p. 292.
39 Decision of the Supreme court of the Slovak republic No. 3 Cdo 33/2008.
40 Olšovská, A. *Skončenie pracovného pomeru*. Second edition. Wolters Kluwer, Prague 2017, p. 69.
41 *Ibidem*, p. 60.
42 Decision of the Supreme Court of the Czech Republic No. 2 Cdon 1797/97.
43 Resolution of the Supreme court of the Slovak Republic No. 1 Cdo 1085/2015.
44 Resolution of the Supreme court of the Slovak Republic No. 1 Cdo 1085/2015.

3.2.2. Dismissal on Medical Grounds

The ground for dismissal enshrined in art. 63 (1) c) of the Labour code again encompasses three different situations: long-term incapacity to carry out work, inability to carry out work due to occupational disease and reaching maximum exposure at the workplace. In all of these cases, the employer is first obliged under art. 55(2)(a) of the Labour Code to reassign the employee to another job. Only when the employer does not have another work for the employee concerned, may the employee be dismissed by notice on medical grounds. Distinction has to be made between a temporary indisposition (sick leave) and a long-term inability to work. During a temporary indisposition (sick leave), employees are protected against dismissal by art. 64 (1) a) of the Labour code.

Long-term incapacity to carry out work

If the employee loses the ability to carry out his/her previous work on a long-term basis for health reasons, the Labour code acknowledges such a situation as a valid ground for dismissal. The incapacity to conduct the work for which the employee was hired has to be confirmed by a medical opinion.

Inability to carry out work due to occupational disease

Similarly, a ground for dismissal will also arise if an employee is prevented from carrying out his or her previous work due to an occupational disease or the risk of such a disease. Again, the loss of capacity for work must be documented by a medical report. A mere doctor's recommendation or advice that the employee should change jobs is not relevant for this purpose[45].

Reaching maximum exposure at the workplace

Finally, an employee may by dismissed also if he/she has reached the maximum permissible exposure in case of work in a high-risk workplace or/and with substances hazardous to health. The maximum admissible exposure is be determined by a public health authority.

3.2.3. Failure to meet the requirements for carrying out the agreed work

In general, an employee is obliged to carry out his/her work in a responsible and proper fashion and needs to possess the necessary competencies to perform the agreed job and to fulfil the work tasks[46]. In case of failure to meet the required conditions, a ground for dismissal may arise. Article 63 (1) d) of the Labour code incorporates in fact four different grounds for dismissal.

45 Olšovská, A. *Skončenie pracovného pomeru*. Second edition. Wolters Kluwer, Prague 2017, p. 72.

46 Švec, M., Toman, J. Zákonník práce, Zákon o kolektívnom vyjednávaní — komentár. Second edition. Wolters Kluwer, Bratislava 2023.

3.2.3.1. Failure to meet the requirements laid down by law for the performance of the agreed work

Generally binding legislation sets out certain requirements that holders of various professions need to fulfil. They usually relate to qualifications, competencies, certificates or experience. However, the legislation may change during the course of employment and the certain requirements may change with it. Therefore, even an employee, who fulfilled all the requirements when taking up a job, may cease to meet (some of) them as a result of a legislative amendment. The Labour code does not distinguish between culpable and non-culpable loss of professional capacity. However, application and interpretation of this provision (as any other) must be done in compliance with accepted principles of morality[47]. t is crucial that the reason for the termination lasts at the time of its delivery to the employee. From a temporal perspective, a situation where an employee does not meet certain prerequisites may last for an extended period of time. The Labour code does not set any time limits by which this ground for dismissal must be invoked. It is crucial however, that the notice conditions must be fulfilled at the time the employee is served with the notice[48].

Employee no longer meets the requirements under art. 42(2) of the Labour Code (Election or Appointment)

Article 42(2) of the Labour Code provides that an election or appointment may be stipulated by special regulations as a condition for exercising the functions of a statutory body and that internal rules of the employer may define election or appointment as a precondition for holding a position in the top management. In such a case, the employment contract can only be concluded after these conditions are met. On the other hand, when this condition is no longer satisfied, e.g. when the employee is deposed, it constitutes a ground for dismissal. However, this Supreme court ruled that this ground for dismissal can only be invoked if the employment relationship was established after the election or appointment[49]. When the employment relationship already existed at the time of election or appointment of the employee to a top management position, it is a different situation. After being removed from the top management, the employee would have to be offered another suitable position. Only when such a position was unavailable or if the employee refused it, this ground for dismissal could be invoked.

Employee fails, through no fault of the employer, to meet the job requirements set by the employer in an internal regulation

In addition to the requirements laid down by generally binding legislation, an employer may lay down additional job requirements for all or certain positions in its internal regulations or in an employment contract. Whilst the requirements set out by law refer more generally to a certain type of work, the job requirements defined by the employer relate to individual tasks

47 Švec, M., Toman, J. Zákonník práce, Zákon o kolektívnom vyjednávaní — komentár. Second edition. Wolters Kluwer, Bratislava 2023.

48 Judgement of the District court Trenčín No. 27 Cpr/2/2013. Judgement of the Supreme Court of the Czechoslovak Socialist Republic of 16. 12. 1976, No. 5 Cz 52/76 (R 38/1979).

49 Decision of the Supreme Court of the Slovak republic No. 7 Cdo/98/2019.

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carried out within the scope of the type of work agreed in the employment contract[50]. They would typically relate to certain skills or knowledge, but they might also concern behaviour or dress code. As operating conditions, methods of production or provision of service may develop and change, so may the employer need to change or adjust certain job requirements in order to align them with operational needs[51]. The requirements set down by the employer have to be legitimate and justified[52]. Failure to meet these requirements may only serve as a ground for dismissal if the employer is not at fault for the employee's noncompliance, for instance by failing to provide the working conditions needed or by poor organisation of work[53]. It is irrelevant whether the failure of the employee to comply with the requirements is self-inflicted or due to objective reasons[54].

Unsatisfactory job performance

Employees are expected to carry out their duties to a certain level of quality[55]. Long-term or repeated deficiencies in the quality of work therefore constitute a legitimate ground for dismissal. Unsatisfactory quality of work, however, cannot be just a one-time occurrence, it needs to take place over an extended period of time or at least repeatedly. The reasons for the unsatisfactory job performance are not relevant. Before resorting to dismissal, the employer first needs to issue a notification in writing to the employee concerned, calling for the shortcomings in the quality of his/her work to be remedied within a reasonable time. An employer may proceed to dismissal only provided that the written notification of unsatisfactory job performance was issued in the previous six months[56] and the employee failed to rectify the deficiencies in the quality of his/her work within the reasonable time provided.

3.2.4. Disciplinary Dismissal

As professor Olšovská points out, disciplinary dismissal is often confused with the previously mentioned dismissal for unsatisfactory job performance[57]. The key difference is that while unsatisfactory job performance is understood as an objective fact where the fault of the employee is not relevant, whilst, in the case of violations of work discipline, the employer must prove fault on the part of the employee in the form of intent or at least negligence.

The term *work discipline* is not defined in the Labour Code or any other regulation. Jurisprudence understands this concept as a body of legal norms governing work discipline, as well as a sum of employee obligations and employee compliance with these obligations[58].

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50 Olšovská, A. *Skončenie pracovného pomeru*. Second edition. Wolters Kluwer, Prague 2017, p. 82.
51 Švec, M., Toman, J. Zákonník práce, Zákon o kolektívnom vyjednávaní — komentár. Second edition. Wolters Kluwer, Bratislava 2023.
52 Olšovská, A. *Skončenie pracovného pomeru*. Second edition. Wolters Kluwer, Prague 2017, p. 83.
53 Pavlátová, J. *Skončenie pracovného pomeru*. Bratislava : Práca, 1985, p. 75.
54 Olšovská, A. *Skončenie pracovného pomeru*. Second edition. Wolters Kluwer, Prague 2017, p. 82.
55 Ibidem, p. 83.
56 Six months preceding the day on which the notice of termination was served to the employee.
57 Olšovská, A. *Skončenie pracovného pomeru*. Second edition. Wolters Kluwer, Prague 2017, p. 86.
58 Barancová, H., Schronk, R. Pracovné právo. Bratislava : Sprint, 2004, p. 366. Also: Decision of the District Court in Ružomberok No. 3Cpr/10/2018.

Thus, crucial to the concept of work discipline are the duties of the employee[59]. However, relevant are only such duties that the employee is bound by in connection with his or her agreed type of work[60]. Violations of work discipline may occur not only at the workplace, but also outside the workplace and outside working hours[61].

The Labour code distinguishes between grave and less serious breaches of work discipline. A grave breach of work discipline constitutes grounds for immediate termination of employment by the employer (see below). Less serious breach of work discipline on the other hand is a ground for disciplinary dismissal. However, the employer may decide for dismissal even in cases of grave breaches, where immediate termination would be justified. This is true for all cases in which immediate termination is warranted, i.e. also when an employee has been convicted of a deliberate criminal offence.

For less serious breaches of labour discipline, employees may be dismissed only if, with respect to a breach of labour discipline, they have been cautioned in writing within the previous six months as to the possibility of notice. Thus, a less serious breach of work discipline needs to occur at least twice within a period of six months in order to constitute a valid ground for dismissal.

The assessment of the severity of a breach of work discipline, i.e. whether a concrete violation is grave or less serious is a matter for the employer. It is relatively common for internal employer's regulations to contain definitions including enumerations of grave and less serious breach of work discipline. Indeed, the court is not bound by employer's assessment and may in the end reach a different conclusion as to the qualification of the breach. The Labour Code offers no guidance in this respect. The literature and case law typically considers as grave violations for instance consumption of alcohol at the workplace, theft, physical violence, violation of safety regulations, long-term absence or the use of the employer's working time and working facilities for private purposes, including the use of company vehicle for private purposes without the employer's consent[62]. On the other hand, less serious violations of work discipline could concern late arrival or early departure from work, leaving the workplace for a shorter period of time without the employer's consent, failure to meet a deadline for submitting a task (depending on the significance of the task), smoking in the workplace (as long as it does not pose a safety risk)[63].

Prior to dismissal on disciplinary grounds, the employer is obliged to inform the employee of the reason for the termination and to allow him/ her to comment on it[64]. Dismissal on disciplinary grounds may only take place within two months from the date on which the

59 Olšovská, A. *Skončenie pracovného pomeru*. Second edition. Wolters Kluwer, Prague 2017, p. 86.

60 Švec, M., Toman, J. Zákonník práce, Zákon o kolektívnom vyjednávaní — komentár. Second edition. Wolters Kluwer, Bratislava 2023.

61 Žuľová, J. (2015). Alkohol na pracovisku. *Práce a Mzdy Bez Chýb, Pokút a Penále*, *X*(11), p. 62-64.

62 Švec, M., Toman, J. Zákonník práce, Zákon o kolektívnom vyjednávaní — komentár. Second edition. Wolters Kluwer, Bratislava 2023, article 63, para 78.

63 Švec, M., Toman, J. Zákonník práce, Zákon o kolektívnom vyjednávaní — komentár. Second edition. Wolters Kluwer, Bratislava 2023, article 63, para 78.

64 Article 63 (6) of the Labour code.

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employer became aware of the reason for the dismissal, but in any case no later than one year from the date on which the ground for termination arose[65].

Where, within the two-month period the employee's conduct in which a breach of labour discipline may be seen becomes subject of proceedings of another authority, notice of termination may still be given to the employee within two months of the date on which the employer became aware of the outcome of such proceedings. This will mainly involve courts or administrative authorities assessing whether an administrative offence or crime has been committed. The Supreme Court clarified that "outcome of the proceedings" means any findings of these bodies, however partial, arising from any of their activities[66]. It thus does not have to be merely the result of a final decision on the merits of the case. After the expiry of the prescribed time limits, dismissal on disciplinary grounds may not be validly carried through.

3.2.5. Duty to offer another suitable job

A material condition for the validity of dismissal by employer is compliance with the duty to offer the employee concerned another suitable job before resorting to the dismissal[67]. This applies in relation to dismissal on all grounds except for unsatisfactory job performance, less serious breach of professional discipline, redundancy resulting from early termination of temporary assignment and dismissal on grounds for which the employment relationship may be terminated immediately.

The employer may only offer a job at the place agreed as the place of work performance in the employment agreement. The crucial question in this regard is of course what constitutes a "suitable" position. The Supreme court ruled that the notion of another suitable job should be understood as a job that is appropriate with regard to the employee's state of health, abilities and, if possible, qualifications, but also made it clear that the bidding duty should be interpreted in compliance with good morals and the principle of non-abuse of rights[68]. The job offered therefore does not necessarily need to match the employee's qualification. A wide interpretation that the employer is obliged to offer any currently available vacancy has been eventually upheld also by the Supreme Court[69]. The employer may thus offer also a position that the employee could only perform after completing a prior (re)training. It is, of course, entirely up to the employee concerned to decide whether or not to accept the offered job or undergo the required (re)training. If the employee refuses the offer, the employer is deemed to have fulfilled its obligation and may proceed with the termination of employment.

An employer is only relieved of the duty to offer another suitable job if there are no available vacancies in the place which was agreed as the place of work performance, not even for a part time position. Failure to comply with the duty to offer another suitable job renders the

65 The same goes for dismissal in case where immediate termination would be justified. If the breach of work discipline occurred abroad, the employee may also be dismissed within two months of returning.

66 Judgment of the Supreme Court of the Slovak Republic No. 3 Cdo 134/2005.

67 Article 63 (2) of the Labour code.

68 Decision of the Supreme Court of the Slovak Republic No. 4 Cdo 306/2008.

69 Decision of the Supreme Court of the Slovak Republic No. 3 Cdo 261/2007.

dismissal null and void, which is a relatively common occurrence in practice[70]. More details concerning the conditions and the manner of implementation of this employer's duty may be agreed in a collective agreement.

3.2.6. Severance and retirement bonus

Alongside the duty to offer another suitable job, the Labour code provides for the payment of severance and retirement bonus, seeking to further mitigate the negative consequences of dismissals. An employee is entitled to severance payment in case of dismissal for organisational reasons (dissolution or relocation of the employer and redundancy) or based on long-term incapacity to carry out work. The amount of severance pay depends on the duration of the employment relationship. If the employee's employment relationship lasted at least two years, the severance amounts to one average monthly salary. In the case of employment of at least five years' duration, the severance pay equals double the average monthly earnings of the employee concerned. It raises to triple if the employment lasted at least ten years. The maximum level of four times the average monthly salary may be reached on condition that the employment lasted at least twenty years[71]. Provided that the employment relationship is terminated for the same reasons by agreement instead of dismissal, the severance will increase in principle by one average monthly salary of the employee concerned[72]. The sums set out in the Labour Code only constitute the employee's minimum entitlements, higher amounts may be agreed in a collective agreement, an individual employment contract or in a separate agreement.

Special provision applies to employees who were dismissed or whose employment was terminated by agreement on grounds of inability to carry out work due to occupational disease or for reaching maximum exposure. Under art. 76 (3) of the Labour code, they are entitled to severance payment equalling at least ten times their average monthly earnings.

Aside from the severance payment, the Labour code also provides for a retirement bonus. Unlike severance, an employee may only receive a retirement bonus once in an entire working career, since it is granted on the occasion of retirement[73]. The amount of the severance grant is set at one month's average earnings of the employee concerned. An employer is not obliged to provide the retirement bonus in case of immediate termination of the employment relationship of an employee who has already reached retirement age as long as the employee applies for a pension before or within ten working days of the termination of his/her employment.

3.2.7. Protection Period

In line with the objective of protecting the weaker party, the Labour Code specifies situations in which an employee may not be dismissed by the employer. This protection period includes for instance the time during which an employee is on a sick leave, maternity leave,

70 Olšovská, A. *Skončenie pracovného pomeru*. Second edition. Wolters Kluwer, Prague 2017, p. 53.

71 Article 76 (1) of the Labour code.

72 The exact amounts are set out in article 76 (2) of the Labour code.

73 In addition to retirement as a result of reaching the retirement age, entitlement to a retirement bonus also arises for employees who became eligible for early retirement or an invalidity pension (if the decline in earning capacity is more than 70%).

paternity leave or parental leave, during pregnancy or when the employee is on long-term leave to exercise a public function[74]. If an employee is dismissed before the start of the protection period so that the notice period is due to expire during the protection period, the employment relationship will end on the expiry of the last day of the protection period. This will not be the case when the employee indicates that he/she does not insist on an extension of the employment relationship.

Even the protection period, however, does not provide absolute protection against dismissal, as a list of exceptions is enshrined in article 64 (3) of the Labour code, which includes e.g. a dissolution of the employer.

IV. Immediate termination of employment

Immediate termination is regarded as an exceptional way of terminating an employment relationship. As the title suggests, the employment relationship is hereby terminated immediately, i.e. by service on the other contracting party. Hence, no notice period applies. Both the employee and the employer may terminate the employment relationship immediately only for reasons exhaustively specified by the Labour code.

As regards formal requirements, immediate termination of employment must be done in writing by both the employer and the employee. In terms of material requirements, the ground for immediate termination must be described factually so that it cannot be confused with any other ground. Indeed immediate termination must be served on the other party within the prescribed time limit, otherwise it is null and void[75].

4.1. Immediate termination of employment by the employer

The employer may terminate the employment relationship immediately only if the employee:

a) has been convicted of a deliberate criminal offence or

b) has committed a grave breach of work discipline[76].

Immediate termination may only be effected by the employer within a period of two months from the date on which the employer became aware of the reason for immediate termination, but in any case no later than within one year from the date on which that reason arose.

74 The complete list is to be found in Article 64 of the Labour Code.

75 Article 70 of the Labour code.

76 For the distinction between grave and less severe violation on professional discipline see above section on disciplinary dismissal.

4.2. Immediate termination of employment by the employee

An employee may terminate the employment relationship immediately provided that:

a) according to a medical opinion, the employee can no longer carry out his/her job without serious risk to his/her health and the employer has not reassigned the employee to another suitable job within 15 days from the date of submission of the medical opinion,

b) the employee's wage, wage replacement, travel compensation, standby duty compensation, income replacement for temporary incapacity for work or part thereof has not been paid within 15 days of due date,

c) the employee's life or health is in imminent danger.

Juvenile employees[77] may also terminate their employment immediately if they cannot perform their work without jeopardising their morals.

The Labour Code again sets a time limit within which immediate termination may be exercised. In the case of immediate termination by the employee, it is one month from the date on which the employee became aware of the reason for immediate termination of the employment relationship. This is just half the period available to the employer.

An employee whose employment is terminated immediately is entitled to wage compensation in the amount of their average monthly earnings for a two-month notice period.

V. Termination of fixed-term employment

Under article 71 of the Labour code, an employment relationship concluded for a fixed period of time shall terminate automatically at the end of the agreed period. However, even fixed-term employment may still be terminated by all the standard methods, provided for by article 59 of the Labour code (see above).

If the employee continues to carry out work after the expiry of the agreed period while the employer is aware of that, the employment relationship is deemed to have been converted into an employment relationship of indefinite duration, unless the parties agree otherwise.

VI. Termination within probationary period

During a probationary period, the employer and the employee may terminate the employment relationship in writing for any reason or for no reason at all. A written notice of termination should normally be served on the other party at least three days before the date on which the employment relationship is to be terminated.

77 According to art. 40 (3) of the Labour code, a juvenile employee is an employee under the age of 18.

Special provisions apply to pregnant women, mothers up to the end of the ninth month after childbirth, women who are breastfeeding and men on paternity leave. With respect to these protected categories of workers, the employment relationship may be terminated by the employer within probationary period only in exceptional cases unrelated to pregnancy, maternity or the care of a newborn child. The termination must be instituted in writing and must be duly justified (in writing), under the sanction of otherwise being null and void[78].

VII. Invalid termination of employment

Where one of the parties deems that the employment relationship has been terminated invalidly by dismissal, immediate termination, termination during the probationary period or by agreement, this party may turn to a court no later than two months from the date on which the employment relationship should have been terminated. Only a court can declare the termination of the employment relationship null and void.

If the party who considers the termination invalid informs the other party of their insistence on continuing the employment, the employment relationship is in that case deemed to continue. This is not the case if the court decides that the employer cannot fairly be required to continue to employ the employee. It follows that in case the employment is deemed to continue, the employer is obliged to keep assigning work to the employee or alternatively, pay the employee wage compensation.

As court cases often ten to drag on for several years, the Labour code caps the wage compensation that the employer is obliged to provide. If the total time for which the employee should be compensated exceeds 12 months, the court may, at the employer's request, reduce the employer's obligation to compensate the employee for the time exceeding 12 months or not compensate the employee for the time exceeding 12 months at all. Wage compensation may be awarded for a maximum of 36 months[79].

The compensation, however, goes both ways. Therefore, if an employee did not carry out work as a result of an invalid termination of the employment relationship, the employer may claim damages from the employee from the date on which the employer notified the employee of their insistence on continuing the employment[80].

Provided that the party who considers the termination null and void does not insist that the employment should continue, the employment relationship is deemed to have been terminated by agreement.

78 Article 72 of the Labour Code.

79 Article 79 (2) of the Labour Code.

80 Naturally, when the employer did not notify the employee of their insistence on continuing the employment, the employer cannot claim damages against the employee.

VIII. The Role of the Workers' representatives at termination of employment

The employer is obliged to consult termination by notice or immediate termination of the employment relationship with the workers' representatives in advance, otherwise the termination by notice or immediate termination of employment is deemed null and void[81].

To avoid dragging on time, the Labour code provides that workers' representatives are obliged to engage in the consultations with the employer regarding termination by notice within seven working days from the date of receipt of a written request by the employer. When it comes to immediate termination, the time limit for consultations is just two days from the date of receipt of a written request by the employer. In case the required consultations do not take place within the set time limits, the consultations are deemed to have occurred.

In the past, under the original Labour Code No. 65/1965 Coll., termination of employment was subject to the consent of the workers' representatives. Nowadays just a consultation suffices.

By workers' representatives the Labour code refers to either a trade union body, works council or a shop steward. In case both trade union and works council function at the workplace, consultations are reserved to works councils, whilst a trade union body enjoys the right to bargain collectively[82]. With regard to unionised employees, the workers' representative competent for the purposes of consulting termination of employment is the relevant trade union body of the trade union organisation of which the employee is a member[83]. If workers' representatives do not operate at the workplace in any form, the employer is free to act independently[84].

IX. Collective Dismissal

Collective redundancy is defined in art. 73 of the Labour code as a situation when the employer (or a part of an employer) terminates employment relationship by notice for reasons stipulated in art. 63 (1) a) and b)[85], or if employment relationship is terminated by another method on grounds not relating to the person of the employee, within 30 days in relation to:

a) at least ten employees of an employer who employs more than 20 and less than 100 employees,

81 Article 74 of the Labour Code.

82 Article 229 (7) of the Labour Code.

83 Švec, M., Toman, J. Zákonník práce, Zákon o kolektívnom vyjednávaní — komentár. Second edition. Wolters Kluwer, Bratislava 2023, article 74, para 11.

84 Article 12 (2) of the Labour Code.

85 Winding-up or relocation of the employer and redundancy due to organisational changes at the employer.

b) at least 10% of employees of the total number of employees of an employer who employs at least 100 and less than 300 employees,

c) at least 30 employees of an employer who employs at least 300 employees.

Collective redundancy is thus not considered to constitute a special method or ground for termination, since all the standard conditions must be fulfilled with respect to each terminated employee. On top of that, the Labour code stipules additional conditions, that the employer needs to comply with if the defining criteria of a collective redundancy are met[86]. These additional obligations could be divided into three categories:[87]

9.1. Information obligations

Under article 73 (2) of the Labour code, the employer must provide the worker's representatives at least one month prior to commencement of collective redundancies all necessary information and to inform them in writing, in particular as to:

a) the reasons for collective redundancies,

b) the number and structure of employees to be subject to termination of employment,

c) the overall number and structure of employees employed by the employer,

d) the period over which collective redundancies shall be effected,

e) the criteria for the selection of employees to be made redundant

9.2. Consultation obligations

After providing the worker's representatives with the required information, the employer then needs to engage in negotiations with them with a view to reach an agreement on measures enabling to avoid the collective redundancies or at least their reduction. These negotiations should mainly focus on options to offer the affected employees suitable work at the employer's other workplaces (after retraining, if needed) and measures for mitigating the adverse consequences of collective redundancies.

The employer fulfils both information and consultation obligations in relation to worker's representatives. In case there are no worker's representatives operating at the workplace, these obligations need to be carried out directly vis-à-vis affected employees[88].

86 These additional obligations do not apply to an employer who was declared bankrupt by court, nor do they apply to termination of an employment relationship concluded for fixed period of time upon expiry of such period. Where collective redundancies concern crew members of a seagoing ship, the employer fulfils these obligations vis-à-vis competent authorities of the flag state.

87 Olšovská, A. *Skončenie pracovného pomeru*. Second edition. Wolters Kluwer. Prague 2017, p. 97-99. ISBN: 978-807552-944-2.

88 Olšovská, A. *Skončenie pracovného pomeru*. Second edition. Wolters Kluwer. Prague 2017, p. 97.

After concluding the negotiations, the employer has to submit a written information on the outcome of these negotiations to the Labour office as well as to the workers' representatives.

9.3. Communication with the Labour Office

The same extent of information that the employer is obliged to provide to the workers' representatives under article 73 (2), has to be shared with the Labour office[89] as well. Additionally, the Labour office must be provided with names, surnames and addresses of permanent residence of the employees whose employment relationship the employer intends to terminate.

Collective redundancies may only commence after one month has elapsed since the written information on the outcome of employer's negotiations with the workers' representatives was delivered to the Labour office. This time should be used to seek solutions to the problems raised by the planned collective redundancies. In this regard the workers' representatives may submit their comments to the Labour Office. The Labour office is entitled to reasonably shorten the one-month period on objective grounds.

9.4. Failure to comply with the employer's obligations regarding collective dismissal

If an employer fails to fulfil the abovementioned obligations, employees whose employment relationship was terminated as part of collective redundancies are entitled to wage compensation in the amount of at least double their average monthly salary[90].

Furthermore, the employer may by sanctioned by the Labour Inspectorate by a fine up to 100 000 EUR[91].

X. Conclusions

The legal regulation of termination of the employment relationship in Slovakia has been relatively stable, certainly in terms of the overall structure, basic principles and methods of termination. The existing legal framework places a strong emphasis on the protection of an employee as the weaker party in the employment relationship, as for most employees the employment is their only or main source of livelihood. Needles to say, the rules governing the termination of employment are mandatory norms the application of which cannot be avoided by the parties.

Unlike in the Czech Republic, where some political parties tend to toy with the idea of introducing dismissals without just cause, Slovak legislation has been spared from major changes in recent years as well as from radical amendment proposals.

89 Office of Labour, Social Affairs and Family.

90 Article 73 (8) of the Labour Code.

91 Olšovská, A. *Skončenie pracovného pomeru*. Second edition. Wolters Kluwer. Prague 2017, p. 98.

The most significant recent change was the introduction of a new ground for termination in article 58 (7) of the Labour code, which is accompanied by transformation of the employment relationship. In the event that a temporary assignment (secondment) of an employee exceeds the duration of 24 months or is renewed more than four times within a period of 24 months, the employment relationship between the employee and the employer or temporary work agency will be terminated and instead an open-ended employment relationship will be established between the employee and the user employer.

Notable is also the development regarding dismissals of employees upon reaching certain age. Amendment to the Labour code No. 76/2021 Coll. of 4 February 2021 brought about a new ground for dismissal[92]. It made it possible for an employer to dismiss an employee by notice if the employee reached the age of 65 years and equally the age for entitlement to an old-age pension. This amendment was due to come into effect on 1 January 2022. However, it was challenged by the parliamentary opposition in the Constitutional Court, as being contrary to the Constitution of the Slovak Republic, Charter of fundamental rights of the European union and the ILO Convention No. 158 on Termination of Employment. The constitutional court suspended application of this new provision as of 21 December 2021 pending a final decision on the merits of the case[93]. As of May 2024, the decision on the merits has still not been rendered.

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92 Article 63 (1) f) of the Labour Code.

93 Resolution of the Constitutional Court of the Slovak Republic in Case No. PL. ÚS 12/2021-79, published in the Collection of Laws of the Slovak Republic under No. 539/2021 Coll.