LABOR LAW OF THE SLOVAK REPUBLIC AFTER THE REFORM AS IN FORCE SINCE JANUARY 1, 2013*

Helena Barancová**

UDK: 349.2-028.79(437.6)

Synopsis: *The author of the article analyzes the reform of labor law in the Slovak Republic, which was adopted by an amendment to the Labor Code, effective from 1st January 2013. The reform of the labor law deepens the legal protection of the rights of employees especially with regard to termination of employment relationship. It tightens legal conditions for the establishment of employment for a fixed period as well as conditions for the exercise of employment through employment agencies. The reform defines anew the term of dependent work and establishes prohibition of the conclusion of commercial or civil law contracts for exercise of dependent work. The reform partly changes the regulation of overtime work in favor of the employees, but so far kept the nature of the working time flexible. The labor law reform strengthens the power of employee representatives and improves conditions for social dialogue at the workplace.*

Keywords: *labor law reform, the right to protection of privacy of an employee, dependent work, flexibility of labor-law relationships, working hours, termination of employment relationships, severance pay on termination of employment relationship, retirement benefits, fixed term employment, employment agencies, social dialogue, collective agreements, enhancement of role of employee representatives.*

* This article has been prepared within the project APVV-0068-11: The human Dignity and the Fundamental Human Rights and Freedoms in the Labor Law
Ta prispevek je bil pripravljen v okviru projekta APVV-0068-11: Človekovo dostojanstvo in temeljne človekove pravice in svoboščine v delovnem pravu.

** Prof. JUDr. Helena Barancová, DrSC., Dean of the Faculty of Law at the University of Trnava in Trnava, Slovakia, Head of the Department of Labor Law and Social Security Law.
Prof. dr. Helena Barancová, dekanja Pravne fakultete univerze Trnava, Trnava, Slovaška, vodja oddelka za delovno pravo in pravo s področja socialne varnosti.

DELOVNO PRAVO V REPUBLIKI SLOVAŠKI PO REFORMI, KI JE STOPILA V VELJAVO 1. JANUARJA 2013

Povzetek: *V svojem prispevku avtorica analizira reformo delovnega prava v republiki Slovaški, ki je s sprejetjem amandmaja k Zakonu o delovnih razmerjih stopila v veljavo 1. januarja 2013. Reforma delovnega prava poglablja pravno zaščito pravic delojemalcev posebej v zvezi s prekinitvijo delovnega razmerja. Zaostruje pogoje za sklenitev delovnega razmerja za določen čas in tudi pogoje za izvajanje zaposlovanja preko zaposlitvenih agencij. Reforma na novo definira termin odvisno delo in prepoveduje sklepanje pogodb za odvisno delo na podlagi civilnega ali gospodarskega prava. Delno spreminja urejanje delovnega časa v korist delojemalcev, vendar ohranja njegovo fleksibilnost. Reforma delovnega prava tudi krepi moč predstavnikov delojemalcev in izboljšuje pogoje za socialni dialog*

Ključne besede: *reforma delovnega prava, pravica delojemalcev do zaščite njihove zasebnosti, odvisno delo, fleksibilnost delovnopravnih razmerij, delovni čas, prekinitev delovnega razmerja, odpravnina ob prekinitvi delovnega razmerja, pokojnine, zaposlitev za določen čas, zaposlitvene agencije, socialni dialog, kolektivne pogodbe, krepitev vloge predstavnikov delavcev.*

INTRODUCTION: GENERAL LEGAL FRAMEWORK OF THE CURRENT LEGAL STATE

The development of labor law in the Slovak Republic in the last decade shows that the changes of government and their political orientation have caused (often quite substantial) changes in labor law. As can be seen from the historical development in a European context, labor law affects broad masses of people who make their living from results of dependent work. Hence, any change in the area of labor law in a specific country creates a political problem, too.

In the Slovak Republic labor law is codified since 1965. The legislation in the area of labor law maintained codified form after the fall of the totalitarian regime, too. Even today this is considered as an advantage in comparison with the fragmentation of the legislation. In 2001, a new Labor Code was adopted, which in terms

of content had already reflected the requirements of the EU law. On the other hand it is necessary to state, that the Labor Code is not the only legal source of labor law in the Slovak Republic. Collective labor-law relations are governed by an individual act no. 2/1991 Coll. on collective bargaining and employment relationships are governed by act no. 5/2004 Coll. on employment services. This act was substantially amended as of 1st May 2013, whereas amendments adopted reflect the ongoing economic crisis and fundamentally change the whole complex of obligatory benefits into optional benefits.

In 2012, after the fall of the right-wing government and winning of elections by the social democrats, the Parliament of the Slovak Republic adopted a reform of the labor law which entered into force as of 1st January 2013. It consists of than 120 legislative changes in the text of the Labor Code. Although the amendment of the Labor Code is extensive, the fundaments of the basic labor-law institutes (for example working time, a very important element of flexibility of labor-law relations and other legal institutes, which should be compatible with the EU law) remain unchanged. The previous text of the Labor Code, before it had been amended by "social-democratic" reform, reflected a relatively liberal model of labor law. It was characterized by flexibility of labor-law relations especially in the area of working time, reduction of trade union rights, deteriorating of working conditions and wages of employees by collective agreements, by removal of the extension of higher degree collective agreements and other specifics in favor of the employers. In the area of working time, the leftist reform of the Labor Code only very slightly amended its liberal character. After the reform of the Labor Code an employee can still have two or three full-time employment contracts. Hence, even after the reform of labor law from 1st January 2013 there are no legislative restrictions for concurrent full-time employment contracts.

Before its reform, legislative development in the area of labor law in the Slovak Republic was characterized for example by the fact, that there was no extension of collective agreements of higher degree. A few years ago a major change in the act no. 2/1991 Coll. on collective bargaining caused a situation in which an extension of collective agreements was directly dependent only on the will of the employer. When the employer didn't want extension of an agreement, such extension could not be invoked against his will. And as the will to extend collective agreements did not exist on the side of employers, even an extension of collective agreements of higher degree didn't exist. This situation of absence of extension of collective agreements still remains. Especially currently employers intensively

hinder the efforts of the Government of the Slovak Republic to reintroduce extension of collective agreements.

Prior to its reform by the social-democratic Government of the Slovak Republic, the Labor Code had been very liberal in relation to the scope of intervention by staff representatives. Weakening of the involvement of employees' representatives formed the essential characteristics of the previous relatively liberal development of labor law in the Slovak Republic. In recent years employers in the Slovak Republic have become accustomed to a high degree of autonomy in decision-making regarding the activities of their own business and similarly, for the future do not want involvement of employees' representatives into the area of labor-law relations.

The reform of labor law which entered into force on 1st January 2003 returned to involvement of employees' representatives into the labor-law relations and significantly expanded and strengthened the quality of the legal status of employees' representatives.

The following changes in the Slovak Republic's labor law effective from 1st January 2013 should be considered as central:

- New definition of dependent work,
- New labor-law regulation of probationary period,
- Tightening of legal conditions for fixed term employment contracts,
- Changes relating to the termination of employment and severance allowance,
- Legislative changes in the area of working time,
- Qualitatively new status of agreements on work performed outside an employment relationship which by content are converging to employment relationship,
- Fundamental change in the legal status of employees' representatives not only regarding their involvement into labor-law relations but also with regard to the increase of their legal protection and the quality of their legal status in labor-law relations.

1. NEW LEGAL DEFINITION OF DEPENDENT WORK

A new definition of "dependent" work should be considered as one of the fundamental legislative changes of the Labor Code in the Slovak Republic. This concept has been previously defined on the basis of eight indicators, all of which had to

be met cumulatively. This legal situation posed considerable problems for labor inspection while controlling of fulfillment of labor-law regulations. Often the absence of a single indicator of dependent work really caused that that dependent work was not considered as dependent work (for example, if the work had to be carried out by means of production of the employer). In business practice, the previous concept of dependent work had been abused by employers and instead of employment contract, employers used civil law or commercial law contract types for performance of dependent work. Performance of work under the civil or commercial law contract types is economically advantageous for the employer as it does not burden the employer with payment of contributions to social funds. This way employees' position with regard to their current and future claims in the area of health insurance or pension insurance had been deteriorated.

During the previous two years employers had been changing a large number of employment contracts to other types of agreements, which do not contain obligation on the side of the employer to pay social security contributions. Also, employers had been forcing employees to change their employee status to the status of a self-employed person. Under the new text of the Labor Code the concept of dependent work is defined in its § 1 by narrowing of the current indicators of dependent work. Dependent work is hence defined by the Labor Code as work carried out for a wage or remuneration in a relation where the employer is superior and the employee subordinate, according to the employer's instructions, in the employer's name and during working time set by the employer. We may assume that a reduction in the number of indicators of dependent work shall narrow legal space for legal coverage of performance of dependent work by civil and commercial law contact types. By concluding of employment contracts and thus by establishment of the employment relationship, employees themselves will be provided with more legal security. The new text of the Labor Code expressly provides for command to exercise dependent work in employment relations and simultaneously prohibits exercise of dependent work by contract types of civil or commercial law.

2. ESTABLISHMENT OF EMPLOYMENT

Pre-contractual relations are considered by the Labor Code as part of employment relationships. One of the earlier amendments to the Labor Code cancelled the

ban of the employer to gain information from the prospective employee about his union affiliation. Pressure particularly from the side of trade unions during preparation of last amendments to the Labor Code caused that this ban had been re-introduced again. Already during preparation of amendments to the Labor Code, social partners of the Government of the Slovak Republic argued that legalized opportunity of the employers to gain information about union affiliation of their future employees prior to the establishment of employment places the employees into a disadvantageous position, if they are non-unionized.

According to the amended § 41 of the Labor Code, an employer may not request information concerning his union membership from a prospective employee.

3. AGENCIES FOR EMPLOYMENT

The amendment to the Labor Code effective from 1st January 2013 commits agencies for temporary employment to exercise temporary assignment solely in the form of employment relationship.

This is the only legal restriction introduced by the recent amendment to the Labor Code in relation to agencies for temporary employment. From 1st May 2013 legally effective amendment to the act no. 5/2004 Coll. on employment services established an irrebuttable presumption of employment for an indefinite period if the agency repeatedly concluded fixed term employment contracts more than 5 times. A sixth renewal of an employment contract for fixed term employment is considered as employment relationship of an employee to the user employer.

4. PROBATIONARY PERIOD

In comparison with the previous legal situation, the amended Labor Code leaves the length of probationary period at up to three months for ordinary employees and in case of managers within two management levels (those who report directly to the statutory authority and those managers under their direct control levels) at up to 6 months. Compared with the previous legal situation until 31st December

2012, the Labor Code now no longer allows exceeding of this period by collective agreements.

5. FIXED TERM EMPLOYMENT RELATIONSHIP

In case of each legislative amendment of the text of the Labor Code, employers are fighting for the most liberal regulation of fixed term employment relationship although in every EU Member State this legal regulation must be compatible with the Directive 99/70/ES concerning the framework agreement on fixed-term work. The main idea of this Directive is the principle of equal treatment. Previous regulation of the Labor Code allowed the employer to conclude the first fixed term employment relationship without substantial reasons for up to three years with the possibility of extension or re-conclusion of the employment up to three times. Following concatenating of contacts for fixed term employment, the employer had to have substantial reason. New legislation within the Labor Code changes the existing situation to the advantage of the employee and allows the employer to conclude a first fixed term employment without substantive grounds for maximum of two years and to extend such contract or renew it for maximum of two times. Over the time horizon of two years, the employer is required to have substantial reason for additional chaining of fixed term employment contracts. Chaining of contracts for fixed term employment is allowed by the Labor Code on the basis of explicitly enumerated grounds, for example in representing employees during illness, maternity or parental leave, for seasonal work and in cases where so agreed upon in the collective agreement. Such new legislative solution is in accordance with Directive 99/70/ES, although it is less favorable for employers compared to previous legal situation.

6. TERMINATION OF EMPLOYMENT RELATIONSHIP

With regard to termination of employment relationship the amendment to the Labor Code provides for a number of legislative changes in favor of the employees. Of these, the most significant should be considered tightening of the existing grounds for termination of employment relationship, which are also in the historical context in the area of labor law in the Slovak Republic conceived as an exhaustive list of

reasons. This can be seen in legal regulation of notice on termination of employment according to § 63.1.a) in cases of dissolution of the employer or his relocation, or if an employee refuses to perform work in another place of employment. In favor of the employee, the amendment of the Labor Code also changes notice pursuant to § 63.1.d).4 which authorizes the employer to terminate employment for reasons of unsatisfactory work performance. This may be applied by employer only if the employer alerted the employee in the last six months and in writing to correct deficiencies and the employee failed to do so within a reasonable time. The amended Labor Code hence extends the previously applicable statutory period for written warning to the employee by the employer from two months to six months. In practical application it was often not possible or realistic for the employee to correct deficiencies in performance of work in a very short time and thus be provided by the employer with another chance.

a) The notice period

Since 2011 notice periods are distinguished by the Labor Code, their length depending on the total duration of the employee's labor-law relationship with a particular employer. Regulation of notice periods is of relatively cogent legal nature.

The recent amendment to the Labor Code fundamentally changed the existing legal regulation of notice periods. The length of the notice period is set as minimum and thus allows an employer to agree with the employees on a longer notice period within employment or collective contract. Statutory regulation of minimum duration of the notice period on the other hand protects the employee. In this way, the current text of the Labor Code achieved a higher standard of harmonization with the international commitments of the Slovak Republic - in particular with the European Social Charter, which requires the Member States to ensure a reasonable duration of notice period to the employees. The Slovak Republic ratified the European Social Charter in 2008. As to the length of the duration of notice period - the basic period of notice is set for the employee and the employer to at least one month. Employees whose employment lasted at least one year and less than five years are entitled to at least a two-month notice period. In case an employee worked for the employer on the day of the delivery of notice for more than five years, such employee is entitled to at least three-month notice period.

In cases when notice is given by an employee, he is entitled to at least two-month notice period, if on the date of notification of notice he worked for the employer for at least one year. In cases of employment relationships shorter than one year, an employee has a legal right to at least one-month notice period.

As apparent from the above, the notice period depends only on the length of employment and not on the nature of notice, as was the case under the previous legal regulation (for example: period of notice on the grounds of economic reasons was longer).

b) Monetary compensation in case an employee doesn't continue to work for the employer until the end of notice period

Monetary compensation for an employee who doesn't continue to work for the employer until the end of notice period was first enshrined in the Labor Code at the time of economic boom and low unemployment. Employers used this legal regulation to insure that their employees did not leave during the duration of notice period before they were able to secure adequate replacement of the employee. The amount of this monetary compensation, if it was agreed with the employee in the employment contract in writing, represented the amount of one average monthly salary of the employee. The amendment to the Labor Code allows an increase in the monetary compensation directly based on the law.

According to the new legal regulation, the employer is entitled to a monetary compensation of the amount which is a multiple of the notice period if the employee does not remain in the employment relationship during the whole time of notice period.

c) Offer of another suitable work - substantive condition of notice

Throughout the past decades an employer in the Slovak Republic could give a valid notice to the employee if one of the reasons for notice provided by the Labor Code has been given and the employer offered other suitable work to the employee prior to notice. Still, employers didn't have this obligation in cases of all notice grounds – for example in cases of termination or relocation of the employer, or in the case of professional misconduct of the employee.

Up till now, the Labor Code allowed it that social partners could agree to exclude this obligation of the employer if so specified in the collective agreement. Hence, if collective agreement excluded this obligation of the employer, he was allowed to give an employee a valid notice without offering them other appropriate work. According to the new regulations in the Labor Code such possibility of exclusion had been cancelled. It is mainly based on economic reasons on the side of the employer (for example redundancy), which in relation to employees pose an uncaused social risk. As of 1st January 2013 the Labor Code again requires as a substantive requirement of notice to offer the employee other appropriate work (assuming the employer has any suitable work available). The employer doesn't have to meet this obligation in cases of notice due to employee's unsatisfactory performance of work duties, violation of work discipline and in case of notice for reasons allowing the employer for immediate termination of the employment relationship.

An offer of another appropriate work does not have to correspond to the qualification of the employee and the work doesn't have to be of the same kind as the parties had agreed upon in the employment contract. In cases of full-time employment it is sufficient if the employer offers the employee part-time work. The work offered by the employer must, however, take into account his health condition.

d) Collective redundancies

In addition to some minor legislative changes, another substantial one was introduced by the recent amendment of the Labor Code, namely the provision of § 73.13 according to which for the purpose of collective redundancies, organizational unit of the employer with no legal personality is considered as integral part of the employer. In this way the Labor Code allows for a situation in which legal obligations of the employer with legal personality in the event of collective redundancies may be performed by organizational units of the employer (branches). Such newly regulated status suits particularly employers with a complex organizational structure, who used to have great difficulties in meeting their notification obligations on collective redundancies related to Labor Offices.

7. PARTICIPATION OF EMPLOYEE'S REPRESENTATIVES AT THE TERMINATION OF EMPLOYMENT RELATIONSHIP

The amendment to the Labor Code re-embedded the participation of employees' representatives at the unilateral termination of employment relationship from the side of the employer, i.e. in situations of notice given by the employer or of immediate termination of employment relationship by the employer. Participation by representatives of the employees is required in the form of a prior hearing of notice given by the employer or immediate termination of employment relationship. Such prior hearing is set as a condition for validity of notice or immediate termination of employment relationship. However, the consent of representative of the employees with notice or immediate termination of employment relationship is not considered as substantive requirement of notice or immediate termination of employment. The aim of the new legal regulation is to force the employer not to ignore employee representatives while giving notices or upon immediate termination of employment relationship.

However, if employees' representatives as a social partner of the employer fail to discuss the request for termination of employment by notice or by means of immediate termination within the statutory period, the Labor Code creates a fiction that the consultation with employee's representatives took place. The Labor Code provides for a 7-day period for negotiation on notice and for a 2-day period on immediate termination of the employment relationship, which begins from the day of receipt of the request by the employer.

8. INVALIDITY OF TERMINATION OF EMPLOYMENT

The issue of invalidity of termination of employment is very important because it is a procedural guarantee of the rights of the employees, enshrined not only in § 79.2 of the Labor Code, but also in §14 of the Labor Code, which provides for judicial review of the rights of the employees. Judicial review of the rights of the employees is enshrined also in the Code of Civil Procedure and in the Constitution of the Slovak Republic. According to the current legal regulation, employees and also employers may defend themselves against invalid termination of employment relationship in the preclusive period of two months. The possibility of judicial review of invalid termination of employment relationship remains, but the amend-

ment to the Labor Code sets differently from the previous regulation the question of financial demands of the employee in cases when the employer invalidly terminated the employment relationship. According to the previous regulation in cases of invalid termination of employment by the employer, the employee could claim from the employer wages compensation for a maximum of nine months if total time for which remuneration should be provided exceeded nine months. If the total time for which an employee should get compensation had been longer than nine months, the employee could not get such compensation. This situation had been partially corrected by the mentioned amendment to the Labor Code by allowing an employee to receive wage compensation for maximum of 36 months, if the total time for which compensation should be provided exceeds 12 months.

9. THE NEW LEGAL REGULATION OF SEVERANCE ALLOWANCE AT TERMINATION OF EMPLOYMENT RELATIONSHIP

The most significant legislative amendment compared to the previous regulation is related to the issue of severance allowance at termination of employment relationship and the reintroduction of concurrence of the notice period and severance allowance. According to the previous regulation such concurrence was not possible and the Labor Code contained the principle of "allowance or notice period".

Also according to the new amendment to the Labor Code provision of severance allowance is possible in case of termination of employment relationship by the employer for organizational or health reasons, but also in case of agreement on termination of employment relationship. The sum of severance allowance differs depending on the number of years of work conducted for the employer.

The new legal model of allowance is related to the number of years worked and is less favorable for the employees. Although the previous regulation was based on the alternation of "severance allowance or notice period ", the differentiation of the amount of allowance according to the number of years worked for the employer was significantly more favorable for the employees. The new regulation addresses provision of allowance independent of the duration of the notice period, but it links its sum to number of years worked for employer.

If the employment relationship lasted less than two years, the employee is entitled to severance allowance corresponding to the amount of average monthly salary.

Employees are eligible for severance allowance corresponding to the amount of double average monthly salary, if they worked for the employer for at least five years. For example, an employee is entitled to allowance of four average monthly salaries if the duration of employment was at least ten years and less than twenty years; if employment lasted at least twenty years, the employee is entitled to allowance of five average monthly salaries.

10. THE REGULATION OF COMPETING EARNING ACTIVITIES OF THE EMPLOYEE

According to the previous legal regulation the employee was required to promptly notify the employer on his earning activity which could be of competitive nature to the activities of the employer. According to the new legal regulation, the employee must ask the employer for prior approval to pursue such earning activity. At the same time the amended Labor Code establishes an irrebuttable presumption in the sense that if the employer does not respond to the request of the employee within 15 days of its receipt, the employer's consent is considered to be provided. Unlike under previous legal regulation, the employer is now also entitled to withdraw consent for serious reasons and in writing (§ 83.3). Such withdrawal is required to be justified.

11. LEGISLATIVE CHANGES OF REGULATION OF WORKING TIME

The Labor Code of the Slovak Republic is based on the 48-hour maximum weekly working time enshrined in the Directive 2003/88/EC concerning certain aspects of the organization of working time. At the same time the Slovak Republic as a EU Member State, must comply with the minimum rest period after the work done.

One of the particularities of the flexibility of employment relationships in the Slovak Republic prior to its social democratic reform was mostly a particularly high amount of overtime at the total of 400 hours per year, 150 hours of mandated overtime and 250 hours of other agreed overtime. The same extent of overtime remains even after the reform of the labor law.

The problem of Slovak legislation in the area of working time is that for reduced daily and weekly rest after work done adequate rest periods in accordance with the current case law of the ECJ are not provided. The Employers are not required to compensate employees for the rest periods without undue delay, but the actual provisions of the Labor Code allow for the long term - 30 days at daily rest periods and within eight months at weekly rest periods.

Another problem of Slovak legislation regulating working time is the constant pressure of businesses to expand personal and material scope of the opt-out system. Until 31st December 2012 opt-out had been allowed by the Labor Code not only to health workers but also to a broadly defined category of managers. Recent amendment to the Labor Code narrowed the personal scope of the opt-out system and since 1st January 2013 the Labor Code allows opt-out to be applied only to health workers.

Despite the adopted legislative changes in the area of working time the Labor Code leaves for the future the possibility to conclude full time employment contracts also in relation to several employers and maximum weekly working time of 48 hours is considered in relation to every employer separately. § 50 of the Labor Code states that the rights and obligations of concurrent employments are to be considered quite separately with the exception of young employees less than 18 years of age.

Application practice according to the previous legislation has proved that the account of working time and flexi-account are helpful tools used in order to avoid reduction of employees in times when the employer is facing economic problems and its employees are not sufficiently used. This legal instrument of the organization of working time is left untouched by the Labor Code. However, its implementation is bound exclusively on agreement with employees' representatives or by collective agreement. Working time account shall not be introduced only on unilateral decision of the employer without agreement with the employee's representatives or without a collective agreement.

A special feature of introducing a working time account is up to 30 month schedule period.

Reduced daily rest after work is possible even after the reform on the enumerated grounds. Legislative formulation of these enumerated grounds in § 92 of the Labor Code is so wide that the application practice often leads to reduction of daily rest period after the work done up to 8 hours. Even after the reform compensatory rest

periods are not regulated in accordance with Directive 2003/88/EC on certain aspects of working time, and the current case law of the ECJ. Even after the reform of labor law legislation allows flexi-account for working time and a very liberal legislation on flexible working time remained in the text of the Labor Code.

12. THE NEW LEGAL REGULATION OF PAID HOLIDAY

Previous regulation of paid holiday according to the Labor Code left determination of time of paid holiday at the discretion of the employer. In practice there were frequently situations when the employer has not drawn paid holiday until the end of the following calendar year. Hence, the reform of the Labor Code responds to these situations as well as to the current case law of the ECJ by conferring the power to draw paid holidays into the hands of the employees themselves. According to the amended provisions of § 113.2 of the Labor Code, the employee can draw his (her) paid holiday if the employer doesn't draw paid holiday to an employee until 30th June of the following calendar year so that the employee can complete it until the end of calendar year. In such a case the employee is required to notify the employer in writing at least 30 days in advance of the paid holiday. This period may be shortened with the consent of the employer.

13. AGREEMENTS ON WORK PERFORMED OUTSIDE EMPLOYMENT RELATIONSHIP

Agreements on work performed outside an employment relationship along with the employment contract create freer labor-law relationship. Up until now, the employers in Slovakia used to replace employment contracts by such agreements, as they did not constitute obligations for employers to contribute to social funds.

Such legal regulation has been substantially amended. The new legal regulation converges the content of labor-law relationship based on agreements on work performed outside employment with the labor-law relationships based on the employment contract. For labor-law relationships based on agreements on work performed outside employment, for example provisions of the Labor Code concerning the employment relationship, particularly on working time (with certain exceptions such as regarding overtime or on-call duty and the performance of

night work) are to be used. § 119. 1 of the Labor Code on minimum wage has to be applied with regard to agreements on work performed outside employment relationship, too. On the other hand, regulations on holiday do not apply. Agreements on work performed outside employment relationship as of 1st September 2012 create insurance obligations of the employer with respect to the relevant social funds, even though certain advantageous rates of levies in case of employing persons in the retirement age and students are provided.

14. THE NEW LEGAL REGULATION OF COLLECTIVE LABOR LAW

In 2001 the new Labor Code introduced dualism in representing employee's rights not only through trade bodies but also through employees' councils. Two years ago a dramatic reduction of trade union rights in favor of employees' councils took place which in terms of the number until today did not gain such level of representativeness as trade unions. Moreover, until the leftist labor law reform the Labor Code enabled trade unions to represent the interests of the employees, hence to be in position of a social partner to the employer, only if it represented at least 30% of employees. Some time ago this problem raised great acclaim and controversy, and is currently to be resolved by the Constitutional Court of the Slovak Republic. The recent amendment to the Labor Code has provided for substantial legislative changes in the system of collective labor law. For more than 10 years now (since 2001) the Slovak labor law has been characterized by dualism in representing employees' rights. In addition to trade unions, the rights of the employees are represented by employees' councils, which can function alongside a trade union. In practice it is rather the case that the employer has either an employees' council or a trade union. Exceptionally there are cases when trade union operates alongside with employees' council. The number of employees' councils is still relatively low compared to the number of trade unions. When planning the amendment of the Labor Code, the unionists therefore demanded a wider range of competencies compared to those of the employees' councils. While according to previous labor-law legislation employees' councils had a crucial competence in the field of labor-law relationships and the trade unions were entitled only to the right of information, the control over compliance with safety and health at work and collective bargaining and participation, consultation had been in the competence of employees' councils. The Labor Code amendment

changes this situation fundamentally. Under the amendment of the Labor Code, trade unions have the right to co-decide, the right for consultation, information and collective bargaining and employees' councils have the right to information. Such division of competences between employees' councils and trade unions shall apply only in cases, when the employer has both - operating side by side – a trade union and an employees' council. If only one of the social partners operates at the employer, this social partner performs all the tasks regarding interference to labor-law relationships, which the Labor Code grants to employees' representatives (with the exception that employees' council is not entitled to collective bargaining).

Unlike the previous legal regulation, according to § 230.2 of the Labor Code, a trade union body is no longer required to prove to the employer that it represents at least 30% of all employees of the employer (representativeness) as a condition to enable it to operate under the Labor Code in the legal position of employees' representative.

The amendment to the Labor Code in the area of collective labor law also changed the present range of the interference of employee representatives in the management of the employer. In many places it has changed the way that the interference from the form of the consultation to co-decision, whether in the form of prior approval, agreement or co-decision.

Until now, act number 2/1991 Coll. on collective bargaining has not been amended so in practice application of higher level collective agreements doesn't operate and is almost non-existent. In the near future amendment to the law on collective bargaining is envisaged, which will solve this problem.

a) Entitlements of employees' representatives to time off from work

Unlike the previous legal regulation, an extensive amendment of the Labor Code establishes relatively high standards of employees' representatives for paid time off from work. Both, trade union officials and members of the employee's council are entitled to paid time off from work. According to § 240 of Labor Code the extent of such a paid time off from work is 15 minutes per one employee. For example, if an employer employs 100 employees he is required to provide 25 paid hours' time off from work to a representative of the employees. The allocation of

paid time off from work is left to employees' representatives. This part of the Labor Code is particularly subject to criticism from the side of employers.

15. CONCLUSION

The labor law reform which entered into force on 1st January 2013 harmonizes the Slovak labor law more with the EU law (for example in the area of regulation of employment for a specified period of time or with regard to regulation of collective redundancies). The most positive effect of labor law reform can be considered to be a repeal of the existing possibilities to worsen working and wage conditions of employees through collective agreements in comparison to conditions set directly by law. Such legal situation had been often subject of justified criticism, because it contradicted the basic function of collective agreements. On the other hand, the extent to which the Labor Code grants paid time off from work to employees' representatives is currently under criticism as it disproportionately favors representatives and interferes with the legitimate interests of employers. The amendment of the Labor Code significantly increased involvement of employees' representatives into employer's decision making, which should be positively evaluated, because the prior trend was gradually eliminating employees' representatives from the employer's decision-making processes.

The amendment to the Labor Code did not comprehensively change the nature of other systematic parts of the Labor Code. As approaching a higher degree of compatibility of the Slovak labor law with the EU law, the most recent reform of labor law in the Slovak Republic somehow remained halfway. The Labor Code still allows for liberal regulation of working time and to a large extent a liberal regulation of agencies for temporary employment. Through regulation of the annual maximum permissible overtime, as well as through concurrent full-time employment or liberal labor-law regulation of work on Sundays and on public holidays – it allows employees to work until their "self-destruction", which in the third millennium cannot be considered as dignified work.

BIBLIOGRAPHY

Monograraphs Books

Barancová,H.-Schronk,R.: Pracovné právo (Labor Law), Bratislava 2012, SPRINT dva.

Barancová,H.: Restructuring of Enterprise in Judicial Decision of EJJ, Plzeň, Aleš Čenek,2009.

Barancová,H.: Labour Code. Commentary. Praha: C.H. Beck, ISBN 2013-06-17.

Barancová, H.: Zákonník práce, Komentár, 2. Vydanie, Praha, C. H. Beck, 2012, s. 1049.

Barancová, H. – Švec, M – Bulla, M.: Ochrana zamestnanca, súčasnosť a budúcnosť pracovného práva, Bratislava, Sprint dva, 2012.

Barancová, H. et al.: Nadnárodný pohyb zamestnancov a služieb, Bratislava, Sprint dva, 2011.

Barancová, H. – Olšovská, A.: Labour Law in Slovak Republic, Alphen aan den Rijn: Kluwer law international, 2011.

Bělina, M. a kol.: Zákoník práce, Komentář, 2. vydání, Praha, C. H. Beck, 2008.

Blanpain, R.: European Labour Law. 12th revised ed., Alphen aan den Rijn: Kluwer Law & Business, 2010.

Blanpain, R. (ed): Regulation of Fixed-term Employment Contracts: a Comparative Overview, Alphen aan den Rijn, Kluwer Law & Business, 2010.

Blanpain, R. (ed): Regulating Employment Relations, Work and Labour Laws: International Comparisons between Key Countries, Alphen aan den Rijn, Kluwer Law International, 2010.

Henssler, M. – Braun, A.: Arbeitsrecht in Europa. 3. Auflage, Köln: Schmidt, 2011.

Hodálová, I. (ed.): Dôstojnosť ľudskej osoby a liberalizácia pracovnoprávnych vzťahov, Trnava, Trnavská univerzita v Trnave, Právnická fakulta, 2010.

Hodálová, I. (ed.): Dôstojnosť zamestnanca v pracovnoprávnych vzťahoch, Bratislava, Sprint dva, 2011.

Marhold, F. – Schmidt, M.: Österreichisches Arbeitsrecht, Wien : Springer, 2012.

Schrammel, W.: Arbeitsrecht : Sachprobleme. 7. Auflage, Wien : Braumüller, 2011.

Olšovská, A. – Laclavíková (eds.): Sociálne riziká a základné ľudské práva - výzvy pre pracovné právo 21. storočia : (zborník vedeckých príspevkov), Trnava, Trnavská univerzita v Trnave, Právnická fakulta, 2011.

Journals Textbooks

Barancová, H.. Rekodifikácia Občianského zákonníka a optimalizácia vzťahu občianskeho práva a pracovného práva.In: Justičná revue, ISSN 1335-6461, Roč. 60, č. 3 (2008).

Barancová, H.: Problems of Slovak Labor Law in Relation to Community Law Requirements, In: Czech Yearbook of International Law, Huntington: Juris Publishing, (2010), ISBN 978-1-57823-272-7.

Barancová, H.: Nové trendy v rozvoji slovenského pracovného práva.In: Acta Universitatis Tyrnaviensis - Iuridica. Trnava: Typi Universitatis Tirnaviensis-spoločné pracovisko Trnavskej univerzity v Trnave a vydavateľstva Vedy, (2009), ISBN 978-80-8082-328-3.

Hodálová.I.: Postavenie pracovného práva v slovenskom právnom systéme. In: Justičná revue, ISSN 1335-6461, roč. 58, č. 3 (2006).

Olšovská,A.: Agentúrne zamestnávanie. In: Pracovné právo v európskej perspektíve. Plzeň: Vydavatetství a nakladatelství Aleš Čenek, (2009).

LABOR LAW OF THE SLOVAK REPUBLIC AFTER THE REFORM AS IN FORCE SINCE JANUARY 1, 2013

Helena Barancová*

SUMMARY

More than 100 legislative changes in the Labor Code have created among professionals the impression of a major reform of employment relationships. Despite such large number of legislative changes, only few of them represent a major legislative change in comparison with the previous legal regulation. Another essential change is a new definition of dependent work, which has in recent years created the most serious challenge for the theory of labor law as it vitally affects individuals and their social protection in labor-law relationships and in their future legal entitlements particularly in the area of sickness benefits or retirement or disability pension. The amended Labor Code changes regulations on termination of employment relationship and (though less obviously) regulations on working time in favor of the employees. Other relevant changes in the Labor Code, which deserve the greatest attention, are to be seen in a fundamental change in the systematic part of collective labor law where the competence of trade unions is significantly strengthened; in improvement of the status of employee's representatives; and in amendments related to the nature of the agreements on work performed outside employment.

* Prof. JUDr. Helena Barancová, DrSC., Dean of the Faculty of Law at the University of Trnava in Trnava, Slovakia, Head of the Department of Labor Law and Social Security Law.