Volume 3 No. 1

International scientific journal

Central European Journal of Labour Law and Personnel Management

Central European Journal of
Labour Law and Personnel Management

Volume 3 2020 No. 1

Central European Journal of Labour Law and Personnel Management

Vol. 3, No. 1, 2020

ABSTRACTING AND INDEXING

Index Copernicus

CONTENTS

Dudić, Z., Dudić, B., Agbaba, B. (2020). Analysis of the European Social Charter and its importance for the protection of selected groups of working women. Central European Journal of Labour Law and Personnel Management, 3 (1), 7-21.
doi: 10.33382/cejllpm.2020.04.01

ANALYSIS OF THE EUROPEAN SOCIAL CHARTER AND ITS IMPORTANCE FOR THE PROTECTION OF SELECTED GROUPS OF WORKING WOMEN

Zdenka Dudić[1] – Branislav Dudić[1] – Branka Agbaba[2]

[1] Faculty of Economics and Engineering Management, University Business Academy, Novi Sad, Republic of Serbia
[2] University of Novi Sad, Novi Sad, Republic of Serbia

Received: 15. April 2020, Reviewed: 04. May 2020, Accepted: 31. May 2020

Abstract

Both the 1961 European Social Charter and its revised version of 1996 constitute international social and economic rights treaties ratified by the Member States of the Council of Europe. Together with the European Treaty for the Protection of Human Rights and Fundamental Freedoms, they are the cornerstones of the contractual system for the protection of human rights in the member countries of the Council of Europe. Moreover, these contracts have contributed significantly to the development of European human rights standards in the areas of personal management, labour law and social security law. Nevertheless, it receives minimal attention from legal theorists. This leads to problems in its interpretation in practice. Through scientific and doctrinal interpretation, authors examine the various provisions of the European Social Charter. They seek answers to practical application problems through scientific literature as well as the case-law of the European Court of Justice. The aim and result of the authors' work is to examine individual documents, to compare them and analyse the differences. The aim of the authors' work is also to evaluate the impact of the case law of the European Court of Justice in connection with the implementation of the Charter into the legal order as well as application practice. The benefit of this article is also the analysis of the impact of the Charter on the rights of working women.

Key words: employee, European Social Charter, revised charter, social rights

DOI: 10.33382/cejllpm.2020.04.01

JEL classification: J53, K15, M54

Introduction

The second generation of human rights comprises economic, social and cultural rights. These rights concern equal conditions and equal treatment and are linked to the realisation of the economic and social tasks of the State. The United States began to recognise them after the First World War. Unlike the first generation of human rights, State action is essential to ensure respect for the rights of the second generation. Like the first generation of human rights, the rights of the second generation are enshrined in the Universal Declaration of Human Rights from 1948 (Articles 22-27), as well as in the 1966 International Covenant on Economic, Social and Cultural Rights (Pešić, 1972, p.14-15)

The European Social Charter is still considered an important catalogue of economic and social rights today. Nevertheless, it is relatively unknown compared to other human rights, even though the first European Social Charter was already adopted by the Member States of the Council of Europe in 1961. Based on the analysis of domestic literature we conclude that there is not much awareness of this document, which may cause significant problems in its interpretation and national implementation.

The European Social Charter is specific to its core, which is rights, of which at least a specified number must be adopted by each Contracting Party. We also consider it is significant for the Charter of 1961 itself, the Protocols which developed and supplemented the original text of 1961 were adopted over the years by the Contracting Parties.

The reason for the choice of this topic was our interest in addressing the social sector and the rights associated with it. We have also decided to examine and process scientifically an almost unknown document, which we have ratified as a country.

Theoretical background

Following the adoption of the European Convention for the Protection of Human Rights and Fundamental Freedoms in 1950, activities within the Council of Europe in the field of human rights concentrated on the drafting of another document. The authors focused on improving the social level and developing the social welfare of the populations of the Member States. This document became the European Social Charter, approved in Turin on 18 October 1961. Its preparation and approval was the result of many years of work. A number of national approaches and views had to be reconciled, stemming from different social and economic conditions.

The adoption of the Charter at international level is considered by Lukas (2014, p.275-288) for expressing national interest and efforts to agree on a certain harmonisation of ways of solving basic social problems. They also wanted to contribute to eliminate or minimise the growth of conflicts that might arise in the area. At the time of the adoption of the Charter of Law, they were enshrined in future objectives rather than existing standards of economic and social rights in most of the Council of Europe Member States. The nature of the provisions of the Charter of 1961 is very different; from declared rights provisions to legal obligations with limited effects. The intention of the authors was to prepare a document that would also be acceptable to economically

less developed European countries. For this reason, the original text of the Charter of 1961 contained only a minimum binding standard of economic and social rights. However, it allowed the parties to gradually extend the scope of their commitments to include others according to their current economic and social conditions.

As stated by the European Court of Justice (1974), the 1961 Charter is based on the economic and social system of the market economy of the European states. According to them, it comprises a range of social and economic rights, defines the commitment of the Contracting Parties to adopt as an objective their national and international policies pursued by all appropriate means to achieve favourable conditions to ensure the effective exercise of rights and principles. This view is shared by Ewing (2009, pp.384-399) and points out that since 1961, the European Social Charter has given Member States the opportunity to commit to the protection of a significant number of economic and social rights. These rights, together with the civil and political rights contained in the European Convention for the Protection of Human Rights, form part of a single interconnected whole and constitute a programme of efforts for European States.

The European Social Charter from 1961 takes the form of an international treaty. Its legal effects and control mechanisms are less effective than the European Convention on Human Rights because of the nature of social rights contained in the 1961 European Social Charter. Some foreign authors (Brunn et al. 2017, p. 5-8) claim that this is an important document containing a catalogue of economic and social rights of a European standard. The social policy of the Member States aims, in accordance with the Charter of 1961, to seek, by all appropriate means at national and international level, to achieve conditions in which the rights and principles set out in Part I of the Charter of 1961 can be effectively implemented. The parties can selectively accept certain rights contained in the Charter of 1961, but there is a so-called hard core of rights, from which they must accept a minimum number of rights.

In this context, however, Di Turi considers (2018, p.615-627) it should be stressed that the international control system oversees the effective application of the 1961 Charter. This has in many cases improved social legislation, national practice and the real application of European standards. It is a peculiarity of the Charter of 1961 that the Contracting Parties are obliged to pursue its declared objectives by all appropriate means. On the other hand, they do not have to be bound by all articles which contain the definition of individual economic and social rights. The compulsory choice of the articles submitted is intended to ensure that at least fundamental social rights are incorporated into the national systems.

This minimum standard within the Council of Europe was passed by Nolan (2011, p.).343-361) some developments, as the 1961 Charter was amended and revised, which reflected two fundamental facts. The first was to achieve some economic potential and to provide greater social and economic benefits by the signatory states. The second was the full manifestation of weaknesses and shortcomings during the existence of the Charter in the organisation of its control system.

Material and methods

The main objective of the contribution is to analyse the European Social Charter of 1961 and the Revised Charter of 1996 and to review their selected provisions. In addition to the main objective, we have also chosen tree milestones, namely:

- identifying the main differences between the 1961 European Social Charter and the 1996 Revised Charter,
- analyse the impact of the 1961 European Social Charter and the 1996 Revised Charter on the status of the selected group of working women,
- evaluate the impact of the case law of the European Court of Justice in relation to the transposition of the Charter into law and application practice.

We want to achieve the chosen objectives, in particular by using international treaties, legislation, technical and scientific literature, as well as the case-law of the European Court of Human Rights.

Given the nature of the article, we apply scientific methods of investigation that result in new knowledge. In particular, we consider the use of the logic method as well as abstraction to be suitable for getting to know the law, without the use of which work, due to its wide scope, could be opaque or chaotic. From the scientific methods of knowledge, we also used an analytical method for analysing legal status and regulation in the article. Using the comparative method, we have sought to make available different views on the European Social Charter, the interpretation of the various institutes, as well as to compare the different versions. Based on scientific knowledge of valid and effective law and legal science, we have also used doctrinal and scientific interpretation in some parts of the work.

The structure of the article, which is divided into three chapters in addition to the introduction, theoretical basis, material and method and conclusion, is also in line with our intention.In the first chapter, we focus on the 1961 European Social Charter and the Protocol that is linked to it. The second chapter is devoted to the Revised Social Charter of 1996 and its control mechanism. In the final, third chapter, we examine the impact of these documents on the specific protection of selected groups of women employed.

Results and discussion

The European Social Charter of 1961 and its systematics

In terms of systematics, the European Social Charter of 1961 consists of a preamble, five parts and an appendix. The preamble contains objectives to be taken into account by the Member States of the Council of Europe. It is about achieving greater unity between Member States, implementing its principles, preserving and fulfilling human rights and fundamental freedoms. Furthermore, Member States declare that the enjoyment of social rights should be ensured without discrimination on grounds of race, colour, sex, religion, political opinion, nationality or social origin (Savet Evrope, 1961).

According to Rataj (2018, p.68-70), the first part consists of rights and nineteen principles recognised by the Contracting Parties as a policy objective. They shall seek to do so by all appropriate means of a national and international nature. The rights

and principles contained in it are many. The most important in our view are the right to work, the right to adequate working conditions, the right to safety and health at work, the right to fair remuneration, the right to organise, the right to collective bargaining, including the right to strike.

The second part of the Charter of 1961 contains the same number of articles as Part I, i.e. 19 articles. This is due to the fact that the rights in the first part are specified in Part II.These are the specific obligations of the Member States in the implementation of individual social rights. According to him, all workers have the right to safe and sound working conditions. These are further specified in Article 3 in Part II, as follows: In order to ensure the effective exercise of the right to safe and sound working conditions, the Parties undertake to lay down regulations on safety and health at work, to take measures to check compliance with these rules and to consult employers 'and workers' organisations, where appropriate, measures to improve occupational safety and health. Part three of the Charter regulates the obligations of the Contracting States, giving them the possibility to make binding only certain rights. However, Article 20(b) of the Charter of 1961 defines the so-called hard core. This means the rights by which each Contracting State must be bound. The rights forming the so-called hard core are: Article 1 – Right to work, Article 5 – Right to organise, Article 6 – Right to collective bargaining, Article 12 – Right to social security, Article 13 – Right to social and medical assistance, Article 16 – Right of the family to social, legal and economic protection, Article 19 – Right of migrant workers and their families to protection and assistance.

From the seven Articles, a Contracting Party had to select at least five articles to which it was bound. Thus, as Lougare states (2015, p.326-354), the Charter therefore opted for an á la carte approach, whereby each country must choose a minimum, but in a relatively flexible way, respecting national differences. In addition to these articles, a Contracting Party had to be bound by other articles, with at least ten articles or forty-five numbered paragraphs. A Contracting Party, in addition to articles already binding upon it, may at any time at a later date notify the Secretary-General of the Council of Europe that it shall be considered bound by one or more articles or numbered paragraphs II of Part 1961 of the Charter.

The fourth part of the Charter of 1961 focuses on the control mechanism. Within it, once every two years, the Contracting Parties have sent a report to the Secretary-General of the Council of Europe on the implementation of the provisions of Part II of the Charter of 1961. The form of such a report has been determined by the Committee of Ministers. However, the content of these reports was assessed by the Committee of Experts, which had comments from national organisations on the reports. Its conclusions were transmitted through the Secretary-General of the Council of Europe to the Consultative Assembly, which gave its views on the Committee of Ministers' conclusions. For a two-thirds majority of the participation of authorised and meeting members, this body may send all necessary recommendations to each of the Contracting Parties. What we consider to be a problem, however, is that these recommendations were not legally binding. Nevertheless, we can see from the practice so far that the parties have respected the recommendations and adopted legislative measures many times to remedy the shortcomings identified.

The last part of the fifth part deals with provisions aimed at limiting liability in the event of war or general threats, on the relations of the Charter of 1961 on national law, on international agreements, on the application of collective agreements and on the territorial application of the 1961 Charter (European Court of Justice, 2000).

Additional Protocol to the European Social Charter, 1988

The European Social Charter of 1961 has been amended over the years. To the 1961 European Social Charter, the Member States of the Council of Europe adopted in Strasbourg the Additional Protocol of 5 May 1988, which entered into force on 4 November 1992. The Additional Protocol shall be made up in the same way as the 1961 Charter of the Preamble, the Five Parts and the Supplement.

In the preamble, the Member States which are signatories to this Protocol have decided to extend the protection of the social and economic rights guaranteed by the 1961 European Social Charter.

The first part of the 1988 Protocol lays down the conditions necessary for the effective exercise of these rights. The second part further defines the rights contained in Part One. One article is dedicated to each of these rights. These include the prohibition of discrimination, the right of employees to be informed about the situation in the company and the right to improve the working environment. The specificity of Part Three is that it contains only one article entitled Commitments. These are the obligations necessary for a Member State of the Council of Europe to be considered a party to the 1988 Protocol. The fourth part is dedicated to the control mechanism (Charro, 2017, p.175-187).The Parties shall report on the application of the provisions adopted in Part Two of the Protocol of 1988 in the reports drawn up pursuant to Article 21 of the Charter of 1961. On this basis, we can conclude that the control mechanism of the 1988 Protocol is identical to that of the Charter of 1961.

Protocol amending the European Social Charter 1991

On 21 October 1991, in Turin, on 21 October 1991, the Charter of 1961 adopted the Protocol amending certain provisions concerning the control mechanism in Articles 23 to 29. The Protocol is divided into a preamble and nine articles. In the preamble, Member States declare their decision to improve the control mechanism of the Charter of 1961 and therefore to supplement some of its provisions.

Articles 1 to 6 deal with the interpretation of the 1961 Charter, provisions such as the provision of copies of reports and comments, the assessment of reports, the European Committee on Social Rights, the Government Committee, the Committee of Ministers and the Parliamentary Assembly. These articles by Simpson (2018, p.745-769) replace the articles of the 1961 Charter on the control mechanism with a view to making it more effective, in particular clarifying the competences of the various bodies involved in the control mechanism. They can be understood as ways of interpreting the articles of the 1961 Charter to which they relate.

Article 7 sets out the modalities by which signatories to the Charter of 1961 may be bound by this Protocol, either by signing the ratification, acceptance or approval without

reservation or with reservations. It shall be followed by ratification, acceptance or approval. Article 8 provides for the entry into force of the 1991 Protocol. This Protocol shall apply days after the date on which all Parties to the Charter of 1961 have given their consent to be bound by it. This condition implies that the 1991 Protocol has not yet entered into force, but almost all its provisions are applied through the Committee of Ministers.

On the basis of these findings, we can characterise the 1991 Protocol as a document that improves the control mechanism, clarifies the functions of the European Social Rights Committee and the Government Committee.

Additional Protocol to the European Social Charter of 1988 establishing a system of collective complaints, 1995

The Member States of the Council of Europe also amended the 1961 Charter with the Additional Protocol of 9 November 1995 in Strasbourg, which entered into force in 1998. This protocol introduced a new method of control. It consists of a preamble and 16 articles. The preamble contains an expression of Member States' interest to adopt new measures to improve the effective implementation of the social rights guaranteed by the 1961 Charter. In particular, they aim to achieve this objective by establishing a collective complaint procedure that would, inter alia, strengthen the participation of employers 'organisations and workers' organisations and NGOs.

The Protocol lays down which organisations have the right to lodge complaints, the actual handling of complaints and the particulars that the complaint must comply with. The complaint shall be in writing and relate to the provision of the Charter adopted by the Contracting Party. The content is also a reservation in which the contracting party against whom the complaint is directed has breached the law. Such a complaint shall be addressed to the Secretary-General of the Council of Europe, who shall submit it to the European Social Rights Committee. It shall set a time limit for the parties concerned to make representations. After examining the documents submitted, explanations and information submitted, the European Social Rights Committee will decide on the content of the complaint. This means expressing its opinion whether the specific law laid down in the Charter has been infringed. If the European Social Rights Committee finds that the Charter has not been implemented satisfactorily by the Contracting Party concerned, the Committee of Ministers shall adopt by a majority of two thirds a recommendation addressed to the Contracting Party concerned. However, such a recommendation is not legally binding according to the European Court of Justice (1995).

The revised European Social Charter of 1996

Following the adoption of the Protocol reforming the control mechanism, a further amendment of the Charter of 1961 was implemented over a number of years. This was due to a need for society as social rights were no longer sufficient in view of national developments. Efforts to amend the Charter of 1961 eventually resulted in the adoption of a new text of the Charter. In 1996, the Contracting Parties agreed on a revised text of the Charter. The reason for the revision of the text was to keep the Charter up-to-date and responding to current needs and questions. Other provisions were added to

the original text. The revised Charter was signed on 3 May 1996, only entered into force on 1 July 1999 (Savet Evrope, 1996).

Like the European Social Charter, the revised European Social Charter is an international treaty that enshrines social rights. According to Swiatkowski and Wujczuk (2018, pp.11-26) is a recognised international legal instrument recognised as equivalent to the European Convention for the Protection of Human Rights and Fundamental Freedoms in the field of fundamental economic and social rights. The revised Charter does not replace or deny the 1961 Charter. This view is based on the fact that the first 19 articles of the Charter of 1961 are transposed and, in some cases, also updated in the Revised Charter. The control mechanism is common to the previous Charter of 1961.

Work on updating the text of the Charter of 1961 has been placed on the agenda of the Charter Rel Committee. There has been an unexpected development. Instead of adopting further protocols to amend or supplement the Charter of 1961, a new text of the Charter was adopted. The revised Charter includes, inter alia, part of the articles of the previous Charter, four articles of the 1988 Protocol, and introduces eight new rights.

The aim of the Revised Charter of 1996 was to enshrine international guarantees of fundamental social and economic rights. The authors took account of developments since the adoption of the original text of the Charter in 1961. The revised Charter is an international treaty that enshrines the rights guaranteed by the original text of the Charter of 1961 and the Additional Protocol of 1988. In addition, it grants new rights and incorporates procedural innovations into its mechanism under the 1991 Protocol and the 1995 Additional Protocol. The control of compliance with the commitments of the Revised Charter is based on the same system of control resulting from the Charter of 1961, the 1991 Protocol and the Supplementary Protocol of 1995, including the system of collective complaints.

Lugarre (2015, p.326-345) however, it is of the opinion that the revision of the Charter was certainly not the last initiative of the Council of Europe and its Member States in the area of social rights. The current socio-economic problems of European countries will force the Member States of the Council of Europe to continue to look for new common ground for improving the quality of life of their citizens. These are not only the most advanced countries in Western Europe, but also those of Central and Eastern Europe, where the problems are much more prominent. The provisions adopted by the Revised Charter are considered (Jimena, 2018, p.14-36) for the Contracting Parties, unquestionable international legal commitments to the protection of human rights. Without this document, European standards of human rights in the economic and social sphere could hardly be established.

In terms of systematics, the revised Charter consists of a preamble, six parts and an appendix. The preamble includes a declaration by the Member States to achieve greater unity among the members of the Council of Europe and to promote their social and economic progress. Furthermore, Member States should bear in mind that the European Social Charter of 1961 and its protocols have agreed to ensure the social rights set out in these documents for their citizens. In the preamble we can see the background to thinking about changing the text of the 1961 Charter. Here we note that the rights

guaranteed by the Charter of 1961 have been included in the Revised Charter to the extent that they have been amended and supplemented.

The first part declares thirty-one rights and principles. The first nineteen rights and principles are identical to those contained in the first part of the Charter of 1961. However, they are amended to take into account the new standards. We note that Articles 20 to 23 are identical to Articles 1-4 of the 1988 Additional Protocol. Eight new rights are contained in the revised Charter, namely:

- Article 24 All workers have the right to protection in the event of dismissal,
- Article 25 All workers have the right to protection of their claims in case of insolvency of their employer,
- Article 26 All workers have the right to dignity at work,
- Article 27 Any person who has family obligations and who has or would like to have a job has the right to pursue it without being subjected to discrimination and, where possible, without conflict between employment and family obligations,
- Article 28 Representatives of workers in an undertaking have the right to protection against acts which could harm them and must have advantages enabling them to carry out their tasks,
- Article 29 All workers have the right to information and consultation in the event of collective redundancies,
- Article 30 Everyone has the right to protection against poverty and social exclusion,
- Article 31 Everyone has the right to housing.

The second part contains the same number of articles as the first part. This is the same situation as in the 1961 Charter, where each article in the first part is devoted to one article in the second part. This ensures the effective exercise of the rights contained in Part One by laying down specific obligations relating to individual rights.

Part Three is divided into Articles A and B. Article A provides that each Contracting Party undertakes to treat the first part of the Revised Charter as a statement setting out the objectives and will pursue them by all appropriate means. Like the third part of the Charter of 1961, the third part of the revised Charter enshrines the rights and principles of the hard core.

By comparing the documents, we found that out of the nine articles of the hard core, seven are identical to the hard core of the Charter of 1961. The hard core of the revised Charter is supplemented by Article 7 and 20. We base this view on the fact that a Contracting Party must be bound by at least six of these nine articles. Furthermore, the Contracting Party must undertake a further number of articles and numbered paragraphs of Part Two. The total number of articles and numbered paragraphs to which the counterparty is bound may not be less than sixteen articles or sixty-three numbered paragraphs. As with the Charter of 1961, a Contracting Party may at any time later notify the Secretary-General of the Council of Europe that it shall be considered bound by one or more articles or paragraphs numbered previously unbound (Riekkinen, 2020, pp.49-79.

The penultimate fourth part of the revised Charter is dedicated to the control mechanism. The last part of the fifth part also enshrines the very current intervention of non-discrimination. It is therefore a matter of implementing the rights laid down in this Charter. These must, without exception, be provided without discrimination with regard

to race, colour, sex, religion, language, political and other opinions, nationality, social origin, health, membership of a national minority, origin or other status. The Appendix provides for a method of interpretation of discrimination where the difference in treatment based on objective and reasonable grounds is not considered to be a discrimination.

Control mechanism under the revised Charter

As mentioned above, the control mechanism is provided for in Part IV of the Revised Charter. At the outset, however, we consider it necessary to recall that the review mechanism of the revised Charter is identical to that of the Charter of 1961. Every two years, all Contracting Parties shall submit to the Secretary-General of the Council of Europe reports on the implementation of the adopted provisions of Part II of the Revised Charter. The form in which the Contracting Parties are to transmit national reports shall be determined by the Committee of Ministers. Since 2007, a new system has been introduced which introduces annual reporting by 31 October. This new system also introduces the division of provisions into four thematic groups, with titles: 1. Employment, Training and Equal Opportunities, 2. Health, Social Security and Social Protection, 3. Labour rights and finally 4. Children, Family, Migrants.

The national reports on the adopted provisions contain information on the legislation and the practical application of the commitments. If the Committee of Ministers requests a Contracting Party to comment on provisions which it has not adopted, the Contracting Party shall also issue the national report on these provisions. The Committee of Ministers also determines their form in these reports and may also determine on which articles the Contracting Party is to report to the Secretary-General (Charro, 2017, p.175-187).

The national reports and comments are assessed by the European Social Rights Committee and, after consideration, it will draw up a report with conclusions. In the case of reports on the provisions adopted, the European Social Rights Committee shall assess the conformity of national law and practice with the obligations incumbent on a Contracting Party in the Revised Charter. The European Social Rights Committee may request clarification and additional information from the Contracting Party if it is necessary to assess the situation and the practical application of the obligations of the Contracting Party and this information has been omitted in the report. After examining the Contracting Party's national report, the European Committee on Social Rights shall issue its conclusions (Mathis et al. 2017, p. 69).

Implementation and interpretation of the right of employed women to special protection

According to the European Court of Human Rights (1980), it is undeniable that women play an irreplaceable role in human society in the cycle of life. For this reason, it has been and will always be necessary, not only at national, but also at European and international level to adjust the status of women employed and provide them with protection at a certain stage in their lives.

When drawing up the text of the European Social Charter, the contracting States also made sure that the Charter also provided protection for employed women. This

right is important to mankind in several ways. The most important thing, however, is the biological factor. This is based on the fact that motherhood generally exhausts a woman and takes a lot of time. For this reason, among others, we can understand the enshrinement of Article 8(1) of the Revised Charter, which provides for the obligation of the contracting party to provide employed women with a total of at least fourteen weeks' leave before and after childbirth in the form of paid leave, with adequate social security benefits or public benefits.

According to Clauwaert (2016, p.405-411), Article 8 of Part 8 of the European Social Charter of 1961 lays down more detailed provisions on women's right to protection. The document grants employed women in the event of maternity and other women employed in selected cases the right to special protection at work. This general provision is further developed in the second part of Article 8. In order to ensure the effective exercise of the right to protection of employed women, the Contracting Parties undertook to ensure that women receive a total of at least 12 weeks of leave in the form of paid leave before and after childbirth by means of appropriate social security benefits or public benefits. Furthermore, the law of the Member States is to be considered illegal if the employer resigns a woman during her absence on the grounds of maternity leave or at a time when the period of notice would have expired at the time of such absence. The States have also assumed a commitment to ensure that breastfeeding mothers are entitled to a sufficiently long break for breastfeeding (Nolan, 2011, p.343-361). Special attention shall be paid to the night work of women in industry as well as to the prohibition of the employment of women by underground working in mines and, where appropriate, to any other work detrimental to them.

The revised Charter not only guarantees these rights but provides for greater protection in its provisions. The Contracting Parties shall undertake:

- ensure that women in employment before and after childbirth receive a total of at least fourteen weeks' leave in the form of paid leave, adequate social security benefits or public benefits;
- to be considered illegal if the employer resigns a woman in a period commencing on the day on which she informed his employer that she is pregnant and ending at the end of her maternity leave or at a time when the period of notice would have expired at the time of such absence;
- ensure that breastfeeding mothers are entitled to breaks of sufficient duration to breast-feeding;
- regulating the night work of pregnant women, women who have recently given birth and women who are breastfeeding their children;
- prohibit the work of pregnant women, women who have recently given birth, and women who are breastfeeding, in underground work in mines and in other dangerous, harmful or difficult work, and take appropriate measures to protect these women's rights in employment.

In our view, the definition of rights under the Revised Charter is clearer, more comprehensible and also changing the beginning of the period of protection. According to the Revised Charter, women's right to protection begins on the day when she announces to her employer that she is pregnant. It's a more favorable wording for a woman. We assume that the initial charter of 1961 defined the beginning of the period of protection as the absence of a woman in employment due to maternity leave. It is

a period of protection when it is illegal for the employer to give her notice (Nosková and Peráček, 2019, p. 44-59).

The third paragraph obliges the contracting States to ensure that breastfeeding mothers are entitled to a sufficiently long break to breast-feeding, which is regulated both in the Charter of 1961 and in the Revised Charter without amendment.

Furthermore, both Charters also regulate night work. While the Charter of 1961 enshrines the obligation to regulate the employment of women at night in industry, the revised Charter goes much further on this issue. Specifically, it specifies the circle of pregnant women, women who have recently given birth and are breastfeeding. The night work of these women is required by the Contracting Party to specify its rules. Similarly, the revised Charter identifies a range of women in terms of underground employment in mines and other dangerous, harmful or difficult work. It applies to women who are pregnant, have recently given birth and are breastfeeding. It is prohibited to employ such women in underground work in mines, hazardous, harmful or difficult jobs.

In short, Article 8 deals with women who are pregnant, women who have given birth, and women who are breastfeeding their children. It is a certain protection for women at work, because it lays down the rules which employers in the parties to the Charter are obliged to observe. We take the view that this right of women in a certain way protects not only women themselves, but the entire population of humanity in a certain way. This view is based on the fact that if women were not protected in the event of pregnancy, this could alter their thoughts and considerations about pregnancy because of fear of losing their job.

According to the European Social Rights Committee, Article 8(1) recognises the right of employed women to maternity leave and maternity financial assistance. The entitlement to maternity leave under the Revised Charter lasts for a minimum period of 14 weeks and must be guaranteed by law. This right must be ensured for all categories of employees. It must also be exclusively referred to as maternity leave, not as leave due to incapacity for work. National legislation can allow women to choose shorter periods of maternity leave. In all cases, however, the compulsory period of leave must be at least six weeks, which the woman concerned may not give up. Financial assistance in maternity must be adequate, while the European Social Rights Committee considers a benefit of 70 % of the salary to be adequate. It adds that, in the case of high salaries, a significant reduction in pay during maternity leave is not in itself contrary to Article 8(3) (Schlachter, 2013, p.105-117).

On Article 8(2) on the prohibition of dismissal in the event of maternity, the European Social Rights Committee has stated that this provision cannot be interpreted as imposing an absolute prohibition. Exceptions could be, for example, in the following cases:

1. if the employed woman has committed misconduct justifying termination of employment,
2. in the event that the employer is wound up,
3. where the period laid down in the employment contract has already expired.

The right of women to have sufficient time to breast-feeding, as provided for in Article 8(3), shall belong to all mothers employed who are breastfeeding their children,

including women working at home. Leave reserved for breastfeeding is to be granted during working hours and should be considered as normal working time together with a right to pay. Leave for breast-feeding must be granted at least until the child reaches the age of nine months.

Penultimate paragraph 4, Contracting States have undertaken to adjust the night work of pregnant women, women who have recently given birth and women who are breastfeeding their children. According to the European Social Rights Committee, this article does not require States to prohibit night work for selected groups of women. A Member State may authorise night work but with due regard to working conditions.

Finally, paragraph 5 prohibits employing these women in underground mining and all other risky work almost without exception. Only self-employed women are excluded from this. The prohibition of night work shall also not apply to women who:

1. occupy managerial positions and do not carry out manual work,
2. they work in health and social services;
3. they spend a short period of training in the underground parts of the mines.

Conclusion

An analysis of the European Social Charter from1961 and the Revised European Social Charter from 1996 have shown that this is an important catalog of economic and social rights. Despite the low interest of legal theorists in researching this topic, we consider its research is necessity. The benefits of our work are also other research results. Based on them, we conclude that the European Social Charter and the Revised European Social Charter are normative treaties. By their significance, these treaties significantly affect the scope of social rights guaranteed in European countries. We are of the opinion that the main significance still lies in the hard core. Based on it, each party guarantees a minimum number of social rights. This ensures a certain minimum of social and economic rights in the Member States.

Another positive aspect of the European Social Charter is that the initial selection of commitments may not be final. It is true that each Contracting Party may take over other articles and numbered paragraphs of the Charter by which it is bound.

The added value of our work is also the analysis of selected court decisions of the European Court of Justice and their application in everyday practice within the extension of social rights. From a practical point of view, the importance of these court decisions as binding sources of law helps individual states to remove possible obstacles in guaranteeing citizens' social rights.

As part of the study, we focused on the right of employed women to protection. We consider this right to be very important in the context of the development of the human population, which has undoubtedly been confirmed to us. We are of the opinion that it is still necessary to provide special protection for women in employment in order to support the reproduction of the population. Although these are women's rights not covered by the hard core of both the original and the revised charters, most parties have enshrined them in their national legislation.

References

1. Bruun, N., Lorcher, K. and Schomann, I. 2017. The European Social Charter and the Employment Relation Introduction. European Social Charter and the Employment Relationship, 5-8
2. Clauwaert, S. 2016. The right to collective action (including strike) from the perspective of the European Social Charter of the Council of Europe. Transfer - European Review of Labour and Research, 22 (SI), 405-411
3. Dalli, M. 2020. The content and potential of the right to social assistance in light of Article 13 of the European Social Charter. European Journal of Social Security, 22 (1), 3-23
4. Di Turi, C. 2018. Freedom of Association of Military Staff and the European Social Charter in the Recent Case-law of the Italian Constitutional Court. Diritti umani e diritto internazionale, 12 (3), 615-627
5. Ewing, K. D. 2009. The European Court of Justice, the EU Charter of Fundamental Rights and the European social model. European Labour Law, 2nd Edition Book Series: Law in Context, 384-399
6. Charro B., P. 2017. International protection of social rights: the European Social Charter, Proteccion Internacional EN EL ambito Laboral: Un estudio desde las dos orillas, 175-187
7. Jimena Q. L. 2018. Four Decades of Membership within the Council of Europe: Spain in Relation to the European Social Charter and the Turin Process. Revista General de Derecho Constitucional, 28 (1), 14-36
8. European Court of Justice. 1995. Judgment of 17 October 1995 – Case C-450/93. [online]. [cit. 2020-05-09], Available at: https: //eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61993CJ0450
9. European Court of Justice. 1980. Judgment of 27 March 1980 – Case 129/79. [online]. [cit. 2020-05-09], Available at: https: //eur-lex.europa.eu/legal-content/SK/ALL/?uri=CELEX%3A61979CJ0129
10. European Court of Justice. 1974. Judgment of April 1974 – Case 167/73.[online]. [cit. 2020-05-09], Available at: https: //eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61973CJ0167
11. European Court of Justice. 2000. Judgment of 6 June 2000 – Case C-281/98. [online]. [cit. 2020-05-09], Available at: https: //eur-lex.europa.eu/legal-content/SK/ALL/?uri=CELEX: 61998CJ0281
12. Lougarre, C. 2015. What Does the Right to Health Mean?: The Interpretation of Article 11 of the European Social Charter by the European Committee of Social Rights. Netherlands Quarterly of Human Rights, 33 (3), 326-354
13. Lukas, K. 2014. The Collective Complaint Procedure of the European Social Charter: Some Lessons for the EU? Legal Issues of Economic Integration, 41 (3), 275-288
14. Lukas, K. 2014. The Fundamental Rights Charter of the European Union and the European Social Charter of the Council of Europe: PARTNERS or Rivals? Making the Charter of Fundamental Rights a Living Instrument, 222-244
15. Mathis, R. L. et al. 2017. Human Resource Management.Boston: Cengage Learning, 69
16. Nolan, A. 2011. Aggravated violations', Roma Housing Rights and Forced Expulsions in Italy: Recent Developments under the European Social Charter Collective Complaints System. Human Rights Law Review, 11 (2), 343-361

17. Nosková, M., Peráček, T. (2019).Termination of employment in the Slovak Republic as a key issue of HR Management.Central European Journal of Labour Law and Personnel Management, 2 (2), 44-59. doi: 10.33382/cillpm.2019.03.04
18. Paul, R.J., Townsend, J.B. 1993. Wrongful termination: Balancing employer and employee rights – A summary with recommendations. Employee responsibilities and Rights Journal, 6 (1), 69-82
19. Pešić, R. 1973. Socijalno osiguranje: with health, pension and disability osiguranjem, – try the kids, and the DECU supplement: saves, reptiles and pokrainian proscriptions, Statuti.Beograd: Književ News, 1291 p.
20. Rataj, P. 2018. The European Social Charter and the Employment Relation. European Journal of Social Security, 20 (1), 68-70
21. Riekkinen, M. 2020. Social life in the context of european minority rights. European Yearbook of Minority Issues.17 (1), 49-79
22. Savet Evrope. 1961. Evropska socijalna povelja. [online]. [cit. 2020-05-09], Available at: https: //www.google.com/search?q=Evropska+socijalna+povelja&oq=Evropska+ socijalna+povelja&aqs=chrome..69i57j0l7.4932j0j8&sourceid=chrome&ie=UTF-8
23. Savet Evrope. 1996. Revidirana evropska socijalna povelja. [online].[cit. 2020-05-04], Available at: http://ravnopravnost.gov.rs/wp-content/uploads/2012/11/images _files _Revidirana%20Evropska%20socijalna%20povelja%20SE.pdf.
24. Schlachter, M. 2013.The European Social Charter: could it contribute to a more Social Europe? Conference on Resocialising Europe and theMutualisation of Risks to Workers Location: Univ Coll London, London, 105-117
25. Simpson, M. 2018. Assessing the Compliance of the United Kingdom's Social Security System with its Obligations under the European Social Charter, Human Rights Law Review, 18 (4), 745-769
26. Swiatkowski, A. M. and Wujczyk, M. 2018. The European Social Charter as a basis for defining social rights for EU citizens. EU Citizenship and Social Rights: Titlements and Impediments to Accesing Welfare. Book Series: Interdisciplinary Perspectives on EU Citizenship, 11-26

Authors contact:
Mgr. Zdenka Dudić, PhD, University Business Academy, Faculty of Economics and Engineering Management, Cvećarska 2, 211 02 Novi Sad, Republic of Serbia. e-mail: *zdenkadudic@yahoo.com*
ORCID: *https://orcid.org/0000-0002-3260-2722*

Mgr. Branislav Dudić, PhD, University Business Academy, Faculty of Economics and Engineering Management, Cvećarska 2, 211 02 Novi Sad, Republic of Serbia. e-mail: *dudicbranko@yahoo.com*
ORCID: *https://orcid.org/0000-0002-4647-6026*

MSc. Branka Agbaba, International Relations Officer, University of Novi Sad, Department of International Affairs, Dr. Zorana Đinđića 1, 21102 Novi Sad, Republic of Serbia. e-mail: *branka.agbaba@uns.ac.rs*
ORCID: *https://orcid.org/0000-0003-0594-138X*

Kiselyova, E. (2020). Labor compliance as an instrument of labor relations control. Central European Journal of Labour Law and Personnel Management, 3 (1), 22-33. doi: 10.33382/cejllpm.2020.04.02

LABOR COMPLIANCE AS AN INSTRUMENT OF LABOR RELATIONS CONTROL

Elena Kiselyova [1]

[1] Educational-scientific Institute of Law of Sumy State University, Sumy, Ukraine

Received: 13. April 2020, Reviewed: 05. May 2020, Accepted: 29. May 2020

Abstract

The article deals with the peculiarities of introduction of a labor compliance system as a system of measures for ensuring employer's and other subjects' of labor law compliance with current labor legislation and other labor regulations. Labor compliance serves as a menas of preventing labor rights violations. The labor compliance system, researched in this article, includes mechanisms of internal labor control (compulsory and voluntary). The article indicates the necessity of adopting a Law of Ukraine on labor compliance, which would provide the definition of labor compliance, state the purpose of introducing compliance control in a business organization, main tasks and the principles of functioning, the structure and composition of a compliance service at an external and internal level, the rights and obligations of comliance professionals, guarantees of their activities and the responsibility attached to their position. Expediency of introducing a compliance control department in organizations, enterprises and institutions is emphasized, with such department controling the subject at all levels, and also creating a position of a compliance specialist as a person acting in accordance with an established Compliance Program. Such measure will not only simplify the existence of organizations and enterprises, but will also significantly improve the quality of labor law. Therefore, it is believed that the theme of introducing labor compliance at enterprises and institutions is very relevant.

Key words*:* compliance control, labor relations, labor control, principles, integration

DOI: 10.33382/cejllpm.2020.04.02

JEL classification: J08, J46, K31

Introduction

Studies show that the number of labor law violations increases every year. According to the results of 2018 inspections the State Labor Service of Ukraine discovered 33,900 violations in the area of labor legislation observance, employment and compulsory state insurance (Public Report of the Head of the State Service of Ukraine for Labor, 2019).

At the same time, these indicators are increasing each year, which leads to a significant deterioration of the rights of both workers and employers on the labor market.

A US survey on labor compliance at the enterprises has shown that 80% of the respondents are trying to comply with labor legislation, 73% have problems with complying with labor legislation and changes introduced, and only 66% of respondents are taking measures to effectively implement changes in legislation (Labor compliance and time tracking a survey of HR and finance professionals, 2013). Similar surveys have not been conducted in Ukraine but the analysis of information sources makes it possible to say that there is a problem with compliance with labor legislation at enterprises, organizations and institutions. In order to solve this problem it is necessary to introduce the concept of labor compliance which regulates labor relations and controls their conformity with established rules and regulations. This measure will not only simplify the existence of organizations and enterprises, but will also significantly improve the quality of labor law. Therefore, the purpose of this study is to define the labor compliance and its components and to compare foreign law in this area with the current legislation of Ukraine.

In accordance with the purpose of the study, the following main tasks have been identified:

1) to determine and explain the essence of a compliance term and its role in labor relations;
2) to determine the personnel basis for compliance inplementation;
3) to analyze the legislation of foreign countries in the field of compliance control implementation;
4) to define the European standards of labor regulations observance;
5) to compare current Ukrainian legislation with European standards in the field of labor compliance.

Material and methods

International regulations, regulations of Ukraine and the European Union served as theoretical and methodological basis for the scientific work. The following methods were used within the course of this scientific work: 1) analytical and logical methods enabled the selection and analysis of information on the subject of research; 2) formal legal method has made it possible to determine the place of labor compliance in Ukraine, the European Union and other countries; 3) the use of historical legal method enabled studying the regulations introduced in both the European Union and worldwide; 4) comparative legal method made it possible to compare the legislation of Ukraine and other countries. For a detailed study of the subject, the author used a variety of general scientific and special methods of cognition, the choice of which is due to the peculiarities of the object, subject, purpose and objectives of the study.

Theoretical background

Within today's general trend for European integration Ukraine is trying to meet the foreign legal standards in all the areas. The Labor law is no exception. The compliance presents a completely new concept for the labor law of Ukraine, however, the legal development of the state, integration into the EU requires such institute to come into existance here and now. Compliance is considered to be a system for ensuring and controling conformity with the law, therefore, labor compliance provides for such control wherever labor relations

are present. Labor compliance is pretty popular abroad: in the United States and the United Kingdom there is a requirement for compliance programs to be implemented in institutions, enterprises and organizations, as it is claimed to be one of the indicators of reliability of the relevant entity on the labor market.

Looking at the origins of this term, it was initially understood as a risk of legal sanctions or public authority sanctions to be emposed and as bankruptcy protection in order to demonstrate that the organization is a law-abiding partner for both other organizations and the state.

Deterrence theory predicts that the likelihood of an investigation together with the cost of penalties for violations affect an employer's assessment of the 'benefits and costs' of complying with a law. The higher the expected penalty relative to the benefits of not complying, the more likely a rational employer will be to comply with the law (Weil, 2011). Private compliance initiatives can be considered practical applications of the theoretical paradigm of "decentred" regulation. Decentred regulation is "distinct from (or perhaps rather subsumes within it) the 'regulatory state'". Kolben explains that a decentred analysis is premised on: a shift away from command-and-control regulation towards forms that are more decentralized, dynamic, interactive and responsive. In this notion, sovereignty and rulemaking authority are layered and complex, allowing a more pluralistic range of legal orders to exist that are equal, or equivalent to that of the state (Kolben, 2007).

Traditional enforcement strategies assume that enforcement efforts should focus at the level where workplace violations are occurring (Weil, 2011). There are a number of reasons why reducing noncompliance matters. First, the majority of workers whose labor rights are not recognized are poor. Second, lack of compliance can produce workplace accidents and distort the allocation of resources. Third, noncompliance directly affects the notion that the law applies equally to all. Fourth, since it usually implies payroll tax evasion, noncompliance affects the fairness of fiscal policy and the state capacity to redistribute (Ronconi, 2010).

In 2018 a survey was conducted among the CIS countries (Ukraine, Russia, Kazakhstan, Azerbaijan, Belarus, Georgia) in order to analyze the peculiarities of organizing compliance within companies, its role and tasks. In the course of this survey it was found that 88% of respondents take into account competition compliance in their activities, 43% annually evaluate compliance risks, 21% of which evaluate them on a quarterly basis, and 37% of respondents name competition compliance and compliance in the field of industrial safety as their priorities (Compliance in the CIS, 2018).

In 2013 the United States also conducted a similar research on compliance with labor requirements during the process of work. When respondents were asked about the problems they encountered during their work the most commonly reported problem was the interpretation of laws and regulations for the organization (44%) and the lack of control over their implementation (23%) (Labor compliance and time tracking a survey of HR and finance proffessionals, 2013).

Therefore, the importance of such an introduction is very simple and clear: compliance with labor legislation is a means of protecting both the worker and the employer. Regulations stipulate labor standards and requirements that can protect those who follow them. It is

very important for the employers to be aware of changes in law and of new labor standards as it is the basis for their work, and the compliance program analyzes and actually brings the organization to new standards.

Compliance control should minimize the risks of an entity in respect of those events that may lead not only to financial losses but also to the loss of trust from the supervisory and controling authorities, shareholders, investors, customers etc. Modern economic development assumes that apart from financial losses, legal and reputational consequences, which influence further activity of the enterprise and its sustainable development, become of great importance (Ovsyuk, 2018).

As businesses have increasingly utilized subcontracting as a business model they have realized that there are significant risks, particularly reputational risks, associated with that model when their subcontractors fail to comply with minimum labour standards including child labour, forced labour, wages and hours, freedom of association, and occupational safety and health. Consequently, they have developed various strategies to respond to these risks including engagement of third parties to monitor, assess, and assist their subcontractors to improve their compliance with labour standards. Businesses have further recognized that risks of noncompliance with labour standards are significantly greater in producing countries where laws and regulations, labour inspectorates, judicial systems, labour unions, and capacity building assistance for their contractors are weak or non-existent, resulting in a growing interest to find ways to support improvement in those conditions (Dupper, Ocrert, Frenwick, Colin Hardy, Tess, 2016).

In general, compliance monitoring approaches are driven by two factors: (1) the compliance rule language that is used to specify the compliance requirements and (2) the event format the compliance checks are based on. Due to the possible heterogeneity of the data sources employed, an integrated target event format is desirable (Ly, Maggi, Montali, Rinderle-Ma, Wil, 2015).

Scientists distinguish two levels of compliance: internal and external. At the internal level, it is important to comply with internal control systems that are used to achieve compliance with external rules (collective agreements, internal code of labor conduct, provisions for payment of remuneration on the basis of annual work results). The external implies compliance with external rules that apply to an organization as a whole (codes, laws, regulations).

In order for such compliance relationships to exist it is necessary to establish the parties. So, the participants in labor compliance are:

- an employer;
- an employee;
- a compliance department.

Each party should understand the essence of the compliance and its significance for the organization, since it presents an instrument of internal control and protection for all participants of labor relations. One of the most important functions of labor compliance is a protective one, which is expressed in:

- protection of the employee which provides for additional control over the actions of the employer, fair compensation, equal opportunities for recruitment and protection against abuse of office and discrimination;
- protection of the employer which consists of employer's right to hire qualified employees and to require that employees arrive on time in order to work and carry out their duties with due diligence.

For this, implementation of such labor control should be based on established principles:

- the program of labor control is independent in its manifestation, that is, the participants of this program shall not be accountable to any other state or local authorities, and only to their own organization's structural authorities, shall interact with other divisions of the organization and have access to all information, including information on state secret and budget;
- regulatory consolidation, namely, adoption of a regulatory act at an enterprise level in which the status of such compliance organization, including an exclusive list of powers, tasks and purpose of activity, would be stipulated;
- obligatory responding to violations of labor law and ongoing control over compliance with the same;
- transparency of activities and interaction with other supervisory bodies and employees.

Results and discussion

The main document which guides labor compliance functioning is the compliance program. Its content should be determined by the current and strategic objectives of the enterprise, by level of existence or absence of various types of compliance risks (Romanchik, 2017). It should be a program that includes all areas of law that are, even if only slightly, related to the labor activities: main and additional. It is clear that while implementing control over the observance of legislation financial, corporate, tax issues, as well as peculiarities of disciplinary and financial liability should be analyzed. It is also important to observe additional processes, such as environmental law, securities, currency control or international relations.

Therefore, the control program faces the following tasks:

- monitoring and assessment of compliance risks;
- informing both employees and employers about their rights and obligations;
- advising the employer on further development of the organization;
- drawing up reports on compliance control implementation;
- control over activities of labor relations participants;
- analysis of budgetary funds and financial position of the organization;
- overcoming possible and existing conflicts between the parties;
- internal control and prevention of punishment in case of legislation violations.

Thus, compliance is a preventive measure that protects an organization both on the internal and on the external level. Compliance function should not be carried out upon unlawful actions being committed but should rather be directed at prevention of these in the future.

Compliance control standards are introduced by the acts adopted at the European Union level as well as those introduced by the individual member states. First of all, the European Commission as a supreme body of executive power in the EU establishes the basic methods assisting companies in meeting EU competition requirements in relation to:

- identifying specific risks of a particular company;
- providing a compliance strategy;
- implementing appropriate mechanisms of control and audit;
- building an effective system of violations notifications;
- regularly updating the strategy (Informational brochure on Compliance, 2012).

The International Organization for Standardization (ISO) in 2014 introduced the ISO 19600 Compliance Management System – Guidelines, standard that acts as one of the main international standards for organizations on how to comply with legislative requirements. ISO 19600:2014 provides guidance on design, development, implementation, evaluation, support and improvement of effective compliance work applicable to all types of organizations. The degree of application of these recommendations depends on the size, structure, nature and complexity of the organization. The international standard is based on the principles of good governance, proportionality, transparency and stability.

An international standard such as ISO / IEC 27002:2013 Information Technology - Security Techniques - Code of practice for information security controls was also developed and provides guidance on organizational standards of informational security and information security management methods, including implementation and management of control tools taking into account the risks environment of the informational security of the organization.

The issue of compliance is enshrined in the EU Financial Instruments Markets Directive (MIFID and MIFID II) which states that investment companies must establish and maintain a compliance function, namely must implement appropriate methods for controlling the activities of the investment forms (Directive 2014/65/EU of the European Parliament and the Council of 15 May 2014). With the adoption of the directive, the interaction of market participants has become more transparent, moreover, they now have the necessary level of legal protection. The principle of MIFID is to seek and attract investors to a strong market, which is only possible under conditions of full transparency of transactions on the stock exchange.

The International Organization of Securities Commissions (IOSCO) report issued in March 2006 regulates the establishment of a compliance function in investment companies (IOSCO Report on Compliance Function at Market Intermediaries) (A report of the Technical Committee of the International Organization of Securities Commissions). The purpose of this document was to review the existing IOSCO principles and to establish additional standards in the area of compliance.

According to recommendations of the Basel Committee on Banking Supervision of April 2005 on Compliance and Compliance Function in Banks (Basel Recommendations), compliance risk is defined as the risk of applying legal sanctions or regulators' sanctions, of a substantial financial loss or loss of reputation by the bank as a result of non-compliance with laws, instructions, rules standards (The official website of the Basel Committee). This document establishes the board's of directors responsibility for overall control over

compliance program management, namely: the board of directors must establish a bank policy with regards to compliance control and executive responsibility for the effective management of the compliance program, including adoption of a compliance policy and informing the bank's employees of its essence, ensuring its observance and reporting to the board of directors.

The UK legal framework requires that all companies provide full information about their financial position, including balance sheet, profit and loss account, statement of changes in equity and also cash flow. Thus, in their activities the organizations are guided by the instructions of the Financial Regulatory and Supervisory Authority (FSA), which establishes the basic principles of regulation and the system of internal control. Another document is the UK Corporate Governance Code (formerly, the Combined Code), which enshrines a very unconventional principle – comply or explain – allowing British companies to apply the code of law at their discretion, that is, to comply with established requirements but at the same time to take into account specific circumstances if the implementation of the provisions is not possible.

In some countries, the introduction of a compliance program in an organization can be a mitigating circumstance as a measure to correct an offense. English companies, Hasbro U.K. Ltd, Agros Ltd and Littlewoods Ltd., having violated financial legislation by concluding a price fixing agreement which affected the trade of certain toys and games within the UK, did manage to reduce their own punishment as a result of mitigating circumstances, including a review and improvement of the compliance program as well as conducting trainings among the companies' management.

Another example of such practice is Art. L464-2 of the Commercial Code of France, which states that if a compliance program has detected and eliminated a violation, then this may be considered a mitigating circumstance. A mitigating circumstance will also occur in a situation where a company takes an obligation to implement the compliance program after having detected a violation (Molchanov, 2017).

In Germany, the Institute of German Auditors (IDW) adopted the Principles of Proper Audit of Compliance Management Systems (IDW PS 980) (Der IDW PS 980 Standard zur Prüfung von Compliance Management-Systemen). Its standards contain provisions and internal recommendation on policies and possible measures that can be taken by companies to enforce established rules. The principles are based on three blocks: preparation of the compliance program concept, its testing and performance evaluation. This way it will become clear which program measures work well and which have to be changed.

Analysis of the situation in Ukraine with regards to compliance at enterprises, organizations and institutions allows to state that such a mechanism is absent here and is required to be created. At the national level, the laws of Ukraine on Prevention of Corruption, on Ratification of the Convention on Transnational Corporations, on Securities and the Stock Market, on Accounting and Financial Reporting in Ukraine, on Banks and Banking and on Sanctions have been adopted. However, each of these laws regulate the company activities within the certain area of law without taking into account other areas.

As has already been mentioned, the main objective of compliance control is to minimize the risks of an entity in respect of events that may lead not only to financial losses but

also to the loss of trust by the supervisory and control authorities, shareholders, investors, customers etc. Modern economic development, apart from financial losses, recognizes the importance also of legal and reputational consequences, which influence further activity of an enterprise and its sustainable development. Compliance forms foundation for control in any organization which always functions in accordance with certain rules, acts as a mandatory component of the management system, one of the important components of which is the system of internal economic control (Ovsyuk, 2018).

The first steps of introducing compliance programs have been noticed only in banking sector. In particular, JSCB Forum, a member of the financial COMMERZBANK Group has implemented its own system of risk management compliance, which ensures control over compliance with the bank legislation of Ukraine. Among the main tasks, the bank sets the following:

- prevention and combatting legalization (laundering) of proceeds from crime,
- effective resolution of conflicts of interest;
- control over the banks' employees' compliance with the requirements of professional ethics while conducting business (Pravdyva, 2011).

OJSC KREDOBANK has also introduced a system of compliance risk management. The Bank, thus, tries to determine the risk of imposing sanctions, the occurrence of financial costs or the loss of reputation or trust to the bank representatives acting on its behalf, in accordance with applicable law, internal regulations, acceptable actions and ethical principles (Public Joint Stock Company KREDOBANK).

Great importance belongs to the introduction of an effective compliance system in an organization where each department and division would really fulfil its functions. The organizational structure of the division that carries out compliance control at PJSC INDEX-BANK consists of the following: the head of the division, the department of financial monitoring, the department of deontology and financial monitoring departments at the branches of the bank.

The tasks of the Department of Financial Monitoring at PJSC INDEX-BANK include:

- implementation of financial monitoring in accordance with Ukrainian legislation corporate requirements;
- submission of reporting information to public authorities;
- implementation of activities aimed at counteraction against legalization and laundering of proceeds from crime and terrorism financing;
- control over the bank's business reputation and image risks;
- development and implementation of the Know Your Customer policy;
- control over the completeness of customer identification coverage;
- evaluation of new products and procedures for their sale (Public Joint Stock Company INDUSTRIAL EXPORT BANK).

The scope of compliance control in Ukraine is very slowly reaching the level when organizations are beginning to participate in the process of developing competition and preventing offenses. Worldwide practice shows that the most effective way of such participating is an introduction of an effective system of internal prevention of legislation violations.

It would be appropriate to record standard compliance processes that do not depend on the organization's area of business. These include the following: counteraction to laundering of proceeds from crime and terrorism financing; regulation of the process of accepting and donating gifts; invitations to events; reporting violations of ethical standards; conflicts of interests regulation; control over purchases of securities by employees; counteraction to the use of insider information and market manipulation; interaction with regulators; confidentiality of information and other processes (Federal Law of 6 Dec. 2011 No 402-FL).

Thus, actions that violate current legislation include: illegal activity and terrorism financing, money laundering through transactions involving securities, laundering of proceeds from crime for the purposes of their introduction into financial turnover, prohibited business practices (Regulation on Financial monitoring implemented by banks, approved by the Resolution of the National Bank of Ukraine Board No 189 of 14.05.2003). According to the Letter on NBU Recommendations on money laundering risks during cash-currency-exchange transactions, there may be cases involving tax evasion, fraudulent activities or legalization of proceeds from crime (Recommendations of the NBU regarding the clients' money laundering risks, sent by letter No 48-012/577- 4007 dated 19.03.2009).

It is clear that the greatest discrepancy with current legislation takes place in the area of finances, however, we shall not forget about control over the employee's and the employer's status, their rights, obligations and reputation. Employers should also consider developing appropriate policies to regulate the workplace use of the latest technologies—location-based tracking, real-time communications monitoring, instant messaging, and video and camera phones, to name a few. Additionally, drug and alcohol testing policies and employee assistance agreements should respect the employee privacy rights.

There are several factors that can influence an organization's decisions about information privacy. The internal nature of the firm itself (its structure, dynamics, and ethics) will impact its decisions about privacy. How it manages information may impact or being impacted by these decisions. Through its privacy decisions, management and policies, it can establish an overarching view of privacy that will guide future decisions about privacy and information management (Pelteret, Ophoff, 2016).

Because privacy compliance is an ongoing concern, companies benefit from implementing a strategic approach to privacy that considers privacy along with corporate growth and objectives rather than from a responsive posture. To embed privacy in the strategic objectives, the company should develop mechanisms by which the privacy team provides information regarding current and future risks and obligations to: senior executives, security and information technology teams, business unit leaders. Planning is crucial, but both the privacy team and other senior leaders must understand the need for flexibility given how rapidly corporate objectives, technology, and privacy laws change.

More recently, in Ukraine, few people thought about the need to introduce compliance in Ukrainian companies. Even fewer were willing to understand all its subtleties and develop compliance programs that would really work in Ukraine. For this, the specifics of Ukrainian legislation and law enforcement practice, as well as the features of historically developed relations in this country in the labor and business sphere, should be taken into account.

The "youth" of this trend in Ukraine has not yet allowed the formation and consolidation of goals and objectives of compliance in the Labor Code of Ukraine, but it is clear that it will be actively introduced into the activities of employers.

The Article 259 of the Labor Code of Ukraine «Supervision and control of compliance with law about work» is defined that «the state supervision and control of compliance with law about work by legal entities irrespective of pattern of ownership, type of activity and managing, physical persons - the entrepreneurs using wage labor performs the central executive body realizing state policy concerning supervision and control of compliance with law about the work, according to the procedure, determined by the Cabinet of Ministers of Ukraine». So, it can be concluded that the company has the necessary external state control, but not the internal one.

Conclusion

Today Ukrainian legislation already has all the necessary basis for encouraging business entities to implement compliance programs. This is evidenced, in particular, by a regulatory framework, although broadened, still regulates financial and legal status of the organization. At the same time, it is still necessary to enshrine the notion of compliance in labor relations.

Thus, it will be appropriate to create a law of Ukraine that would include:
- definition of the labor compliance concept;
- the purpose of introducing compliance control at the enterprise;
- the main tasks and principles of functioning;
- the structure and composition of the compliance service at the external and internal levels;
- rights and obligations of compliance specialists;
- guarantees of their activities;
- responsibility of compliance specialists.

In order to develop and achieve the identity of terms, it is necessary to include the concept of compliance and its tasks in an organization's functioning into the following laws of Ukraine: Law on Corruption Prevention, Law on Ratification of the Convention on Transnational Corporations, Law on Securities and the Stock Market, Law on Accounting and Financial Reporting in Ukraine and Law on Banks and Banking.

Following the example of France, Art. 67 of the Criminal Code of Ukraine, among the circumstances mitigating punishment, in addition to appearing with confession, true repentance or active assistance in investigating a crime, voluntary compensation of the damage or elimination of the damage, committing a crime under the threat of coercion or through financial, subordination or other dependence, it is also necessary to introduce mitigation of punishment in case of introducing compliance control in an organization, enterprise or institution.

In addition to these changes at legislative level, it is also necessary to introduce acts of recommendatory nature, such as methodological recommendations, which will provide organizations with an example of how to build a labor compliance mechanism. It is also necessary to introduce the right to comply or explain so that the work of a compliance

program could be carried out not only on commonly established standards, but also have an individual approach to each entity.

References

1. A report of the Technical Committee of the International Organization of Securities Commissions. (2006) [online]. [cit. 2019-12-15] Available on: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD214.pdf
2. Directive 2014/65/EU of the European Parliament and the Council of 15 May 2014 on Financial instruments markets, with amendments to Directive 2002/92/EC and Directive 2011/61/EU (as revised) (valid within the EEA) (para 18, 21 art. 4) [online]. [cit. 2019-12-15] Available on: https://www.cbr.ru/finmarkets/files/legislation/MiFiD2.pdf
3. Der IDW PS 980 Standard, SCHWEIZER PRÜFUNGSSTANDARD (PS) 980: GRUNDSÄTZE ZUR PRÜFUNG VON COMPLIANCE MANAGEMENT SYSTEMEN, 27. Juni 2018 [online]. [cit. 2019-12-15] Available on: https://www.expertsuisse.ch/mm/PS_980_Grundstze_zur_Prfung_von_Compliance_Management_Systemen.pdf
4. Dupper, Ocrert, Frenwick, Colin Hardy, Tess (2016). The interaction of labour inspection and private compliance initiatives: a case study of better work Indonesia. Better work Discussion paper, (21) June. [cit. 2020-05-03] Available on: https://www.researchgate.net/publication/315382278_The_Interaction_of_Labour_Inspection_and_Private_Compliance_Initiatives_A_Case_Study_of_Better_Work_Indonesia
5. Compliance in the CIS: Key Challenges & Automation, 2018, KPMG in Russia and the CI. [online]. [cit. 2019-12-15] Available on: https://assets.kpmg/content/dam/kpmg/ru/pdf/2018/06/ru-en-compliance-survey-2017.pdf
6. Information technology - Security techniques - Code of practice for information security controls. ISO / IEC 27002: 2013. [online]. [cit. 2019-12-15] Available on: https://www.iso.org/standard/54533.html
7. Implementation of state control over the observance of labor legislation. Public Report of the Head of the State Service of Ukraine for Labor (2019). [online]. [cit. 2019-12-15] Available on: http://dsp.gov.ua/wp-content/uploads/2019/02/prezentacija-derzhpraci1222.pdf
8. International standards on Compliance Management Systems - Guidelines. ISO 19600: 2014 (E). [online]. [cit. 2019-12-15] Available on: https://portaldagestaoderiscos.com/wp-content/uploads/2017/12/ISO_19600_2014en.pdf
9. Informational brochure on Compliance. (2012). [online]. [cit. 2019-12-15] Available on: https://ec.europa.eu/competition/antitrust/compliance/index_en.html
10. Kolben, K. (2007). "Integrative Linkage: Combining Public and Private Regulatory Approaches in the Design of Trade and Labor Regimes", In Harvard International Law Journal, Vol. 48, No. 1, pp. 203- 256
11. Labor Code of Ukraine: Law of Ukraine, 10.12.1971 No. 322-VIII [online].[cit. 2019-12-15] Available on: https://zakon.rada.gov.ua/laws/show/322-08
12. Labor compliance and time tracking a survey of HR and finance professionals (2013), Dimensional Research [online]. [cit. 2019-12-15] Available on: https://www.replicon.com/wp-content/uploads/2016/07/dimensional_research.pdf
13. Linh Thao Ly, Fabrizio Maria Maggi, Marco Montali, Stefanie Rinderle-Ma and Wil M.P. van der Aalst (2015). Compliance monitoring in business processes: Functionalities, application, and tool-support. Information System, 2015 Dec; 54: 209–234

14. Molchanov, A.V. (2017). Antitrust Compliance: Importance and Prospects of Legal Regulation. Lawyer, No. 17. M.: Lawyer Publishing group, 2017, 48
15. On Accounting: Federal Law of 6 Dec. 2011 No 402-FL: in edit. from 18 July 2017, Russian newspaper. 9 Dec. 2011
16. Ovsyuk, N.V. (2018). Compliance control in the field of labor relations. V.O. Sukhomlynsky National University of Nikolayev. Issue No 24, 662-667
17. Pravdyva, L. (2011). Improvement of Banks Corporate Governance and Compliance Risk Management. NBU Bulletin, No 7, 10-13
18. Pelteret, M. & Ophoff, J. (2016). A review of information privacy and its importance to consumers and organizations. Informing Science: The International Journal of an Emerging Transdiscipline, 19, 277-301. [online]. [cit. 2020-05-03] Available mode: http://www.informingscience.org/Publications/3573
19. Public Joint Stock Company KREDOBANK. [online]. [cit.2019-12-15] Available on: http://www.kredobank.com.ua/
20. Public Joint Stock Company INDUSTRIAL EXPORT BANK (PJSC INDEX BANK, a member of the Credit Agricale financial group) [online]. [cit. 2019-12-15] Available on: http://indexbank.ua/ukr/main.php
21. Romanchik,T.V. (2017). The place of Compliance in Ensuring Economic Security of an Enterprise. Current issues of enterprizes' organization and management in modern economy: theses and scientific papers for the 7th sci.-pract. conf., November 29, 152-154
22. Ronconi, Lucas (2010). Enforcement and Compliance with Labor Regulations in Argentina. Industrial and Labor Relations Review, vol. 64 (4), pp. 719-736 [online]. [cit. 2020-12-15] Available on: http://www.fcias.org.ar/wp-content/uploads/2015/08/25-Ingl%C3%A9s.pdf
23. Regulation on Financial monitoring implemented by banks, approved by the Resolution of the National Bank of Ukraine Board No 189 of 14.05.2003 [online]. [cit.2020-12-15] Available on: http://zakon.rada.gov.ua/
24. Recommendations of the NBU regarding clients money laundering risks, sent by letter No 48-012/577- 4007 dated 19.03.2009 [online]. [cit.2019-12-15] Available on: http://zakon.rada.gov.ua/
25. The official website of the Basel Committee. Bank for international settlements. [online]. [cit.2019-12-15] Available on: www.bis.org/bcbs/index.htm
26. Weil, David (2011). The Economic and Labour Relations Review. Enforcing Labour Standards in Fissured Workplaces: The US Experience, vol. 22 No. 2, pp. 33–54. [online]. [cit. 2020-05-03] Available on: https://web.law.columbia.edu/sites/default/files/microsites/career-services/David%20Weil%20Enforcing%20Labour%20Standards%20in %20Fissured%20Workplaces.pdf

Author contact:
assoc. prof. Dr. of Legal Science Kiselyova Elena I., Sumy State University, Educational-scientific Institute of Law, Department of Administrative, Economic Law and Financial and Economic Security, Sumy, 59, Petropavlivska str., 3, Ukraine. e-mail: *lenakiseleva2008@gmail.com*
ORCID: *https://orcid.org/0000-0002-5625-0952*

Korauš, A., Kaščáková, Z., Felcan, M. (2020). The impact of ability-enhancing HRM practices on perceived individual performance in IT industry in Slovakia.
Central European Journal of Labour Law and Personnel Management, 3 (1), 34-46.
doi: 10.33382/cejllpm.2020.04.03

THE IMPACT OF ABILITY-ENHANCING HRM PRACTICES ON PERCEIVED INDIVIDUAL PERFORMANCE IN IT INDUSTRY IN SLOVAKIA

Antonín Korauš[1] – Zuzana Kaščáková[2] – Miroslav Felcan[1]

[1] Academy of the Police Force in Bratislava, Bratislava, Slovakia
[2] Faculty of Management, University of Prešov, Prešov, Slovakia

Received: 08. May 2020, Reviewed: 11. June 2020, Accepted: 27. June 2020

Abstract

The Human Resource Management is usually the source of sustainable competitiveness in the constantly changing environment and business world. There is no doubt about the impact of the HRM tools and HRM practices on performance. HRM practices can be clustered into the bundles according the model AMO, focusing on the abilities, motivation and opportunities to perform. This paper tests the correlation between the ability-enhancing HRM practices and the determinants of the individual performance. The research was conducted in IT industry in Slovak Republic with the aim to understand the relationships between HRM practices and individual performance. The outcome provides an important message for the HR management in order to influence and manage employee performance with the focus to create competitive advantage of the organization.

Key words: Human resource management practices, Training and development, Employee performance model AMO, ability

DOI: 10.33382/cejllpm.2020.04.03

JEL classification: J24, M53, M54

Introduction

Human resource management represents the most important part of the strategic management of every organization. It is impossible to achieve objectives and create revenue without having skilled and qualified workforce. Even nowadays, when we all live in a VUCA environment and all the circumstances around are changing constantly. Most of the organizations face the lack of talented employees and they

create various learning programs in order to fill these gaps. Organizations need to focus on proper set and managed HRM practices, in order to fulfil their goals and create competitive advantage.

HRM practices and its impact on employee performance have been studied for years, with various important outcomes. There is an excellent and structured framework that provides a better understanding of the relationship between HRM and performance, called the AMO model (Marin-Garcia and Martinez-Tomas, 2016). AMO theories describe that optimal performance arises from a combination of three key elements: ability (A), motivation (M) and opportunity (O) (Blumberg and Pringle, 1982; Tian et al., 2016). According to the model, people perform well when they have the capabilities, they have the adequate motivation, and their work environment provides opportunities to participate (Boselie, 2014; Boxall & Purcell, 2003; Choi, 2014; Marin-Garcia and Martinez-Tomas, 2016).

The research focuses on the selected bundle of HRM practices using the model AMO and their impact on individual performance in IT industry in Slovakia. This industry has huge potential for the future, also in the Slovak Republic. Based on statistics, it is employing more than 78000 employees and brings huge contribution into GDP of the country. There are more and more companies trying to join the IT market, as they all see the knowledge potential of employees and students in Slovakia.There is a big need of talented and qualified employees in this industry. Organizations can influence their performance by having the right employees in the right job, supported by implemented HRM practices.

Theoretical background

The AMO model is comprised of basic concepts of psychology (Kroon et al., 2013), which are related to three systems that shape individual characteristics: ensuring that employees have the appropriate abilities, motivating employees to enhance discretionary behaviour, and empowering them toward organizational outcomes (Harney & Jordan, 2008).

Ability dimension is usually defined by the acronym KSA (knowledge, skills and abilities) (Fu, Flood, Bosak, Morris & O'Regan, 2013). Ability-enhancing practices aim to improve those three components. Examples of these practices are employee recruitment techniques or formal training (Kroon et al., 2013; Raidén et al., 2006).

Ability is the group of all kind of behaviour that employees have to use in their job to be able to manage working task competently (Kubeš, 2004). It can be defined as the ability to transform inner skills into visible outcome. Abilities are crucial personal characteristics that lead to effective and excellent performance (Armstrong, 2007). Abilities can be defined also as the set of skills and behaviour that organizations expects to be used by employee job performance (Rankin, 2002).

Organizations use the abilities by managing employee performance, training and development, selection process and remuneration (Armstrong, 2007). The abilities represent the basics in terms of the employee performance. Employee needs to be skilled, needs to have some knowledge and experience to be able to fulfil the

tasks. Abilities are basic determinants for employee performance. Organizations place great emphasis on training and development of their executive employees since all abilities and competencies can be developed, including social intelligence. All this affects the overall process of HRM. Therefore, it is inevitable that companies should apply HRM practices focused on ability-enhancing should be applied in the organizations to be more competitive.

Employee performance is determined by employee effort as well as the skills and the level of identification with the tasks performed. This is usually evaluated based on selected criteria related to job requirements, goals of the job, specific job tasks, working environment and conditions and job position in the organization. This all requires an effort, commitment, focus, using all gained skills, knowledge, experience, learning type and approach, attitude and mindset, personal characteristics, using know-how, motivation and many other elements impacting the performance outcome (Vetráková, 2007). Besides, the individual personality and manager´s approach to leading and managing people is an important factor influencing the individual's performance. Previously, organizational, planning and decision-making abilities played a key role in people management, while at the present, social competencies are preferred more often (Korauš et al. 2016).

The employee performance is influenced by objective and subjective factors that are described as follows (Armstrong, 2007):

a) Individual factors – professional and personal competencies and motivation:
   - Individual determinants – professional skills, qualification, physical and mental skills , personal characteristics
   - Reactions on impulses from environment
   - The level, scope and articulation of cognitive processes and complex learning approach
   - Attitudes to work, morale profile and value system, interests
   - Motivational dimension (needs, desires, interests, aspirations)
   - Perception of social status and impact on co-workers
b) Objective factors – support of the organization:
   - Working conditions – economic, organizational structure, technical equipment, technology
   - Working environment – working space, physical working conditions
   - Socio-mental conditions
   - Management and leadership

Employee performance is affected also by proper job content, heterogeneity, autonomy of employees, regular constructive feedback and social interaction among the employees that lead to employee satisfaction, higher working engagement and commitment as well as knowledge sharing. Higher the autonomy of the employee is, the higher impact of individual factors on employee performance shows, and the less impact of organizational factors plays an important role (Armstrong, 2007; van Wijk et al., 2008).

Human Resource Management Practices can be briefly described as standardized and formally processed programs in area of Human Resource Management in organizations. Those practices contribute to successful strategy implementation mainly in the area of

recruitment and selection, training and development, remuneration, employee life cycle management and many other HRM processes (Kachaňáková et al, 2011; Mura, Horvath, 2015).

The studies vary which practices have the most impact on employee performance, mostly because different bundles of HRM practices used in the researches. Some of the studies (e.g. Chang and Chen, 2011) assume that employee work-related skills and competences are the main determinant of the employee productivity. Ability relates to performance primarily through job knowledge, and high-ability workers tend to demonstrate higher performance because they acquire and apply job-relevant knowledge better than those with lower level of ability (Van Iddekinge et al., 2017). Prior empirical studies provided support for the relevance of employees' abilities (A) to increase their job performance (Liao et al., 2009). These studies assume that employee performance depends on the extent to which employees are able to fully exploit their skills at work (Bos-Nehles et al., 2013). The abilities are considered as essential part influencing employee performance.

Several authors have proposed that HR practices could be classified according to the same three-dimensions, distinguishing among three HR bundles: ability-enhancing HR bundle, motivation-enhancing HR bundle and the opportunity-enhancing HR bundle (Bailey, 1993; Appelbaum et al., 2000; Lepak et al., 2006). Each bundle represents a combination of HR practices that share the same purpose. Ability-enhancing practices include comprehensive recruitment, rigorous selection and extensive training (Jiang et al., 2012).

Training and development is a function within Human Resources management used to fulfil the gaps between current and expected performance (Elnaga & Imran, 2013; Nassazi, 2013). Training is focused on improving the skills necessary for accomplishing organizational goals (Elnaga & Imran, 2013), since it expands the efficiency of individuals, groups, and organizations (Jehanzeb & Bashir, 2013). The concept of development can be seen as gaining new abilities and skills for personal growth (Jehanzeb & Bashir, 2013), it may also be seen as a broader concept. It may be seen as the holistic, long-term growth of individuals in order to perform future roles and responsibilities (Nassazi, 2013). When organizations provide the resources necessary to perform a job, individuals become satisfied with their job and will become more productive, while the organization becomes more successful (Jehanzeb & Bashir, 2013). There are various way to develop employees, most often trainings are used, mentoring, lectures and knowledge sharing. In recent years, an important area of research has focused on information competence, security threats, sharing tacit knowledge and demonstrating its practical significance (Baričičová 2018; Ivančík 2020; Kazanský, Ivančík 2018). The leaders of organisations do not appreciate the importance of this behaviour appropriately and consider it to be a harmful organisational feature rather than an exploitable possibility (Bencsik et al., 2019).

Material and methods

The main purpose of this study is to analyse the relationship between ability-enhancing HRM practices and the employee performance in IT industry in Slovakia.

The research on impact of HRM practices according to AMO model has not been conducted yet in the IT industry in the Slovak Republic. This industry is based on the technology and knowledge, so we focused on the ability-enhancing HRM practices to study in this research.

The research was conducted in IT companies of various size in terms of employees in Slovakia. From the max number of employees in IT industry in 2018 in SR, N=67 600 employees, we calculated minimum size of research sample as 382 respondents, if z = 1,96 (z-score); e = 0,05 (error range; percentage in decimal form). Finally, we had 393 responses on the questionnaire survey to obtain primary data and information.

Considering the methodology applied, we have chosen a mixed approach in the empirical part of this contribution. We used a questionnaire survey to obtain primary data and information. A five-point Likert scale was used ranging the respondents' answers from strongly agree to strongly disagree. The questionnaire survey was completed with the basic scientific methods of research e.g. description, deduction, induction, synthesis, analysis and comparison. In order to make the results easier to understand and transparent, we have also applied a graphic apparatus in the form of tables and pictures. The data from survey questionnaire was processed by statistical software Statistica 13.5 EN. At the end of the paper, we provide suggestions and recommendations for everyday practice.

We tested the hypothesis:
H: A significant positive relationship can be detected between the ability-enhancing HRM practices and the perceived individual performance.

Based on the theoretical analysis of employee-performance indicators, we selected the following bundle of determinants that was used in the research.

1. Professional knowledge
2. Quality of the work done
3. Performance over the set targets
4. Result orientation
5. Customer orientation
6. Company values´ orientation
7. Ability to work in team
8. Time keeping /accuracy
9. Adaptability, flexibility
10. Communication skills
11. Stress resistance, resilience
12. Development potential
13. Job experience
14. Relevant praxis

Another bundle for testing was represented by the ability-enhancing HRM practices:

1. Recruitment
2. Selection
3. Training & Development

To test the hypothesis, we used the statistical method called canonical-correlation analysis. As we had two bundles of variables, this method was the best to use. We had two vectors X = (X1, ..., Xn) and Y = (Y1, ..., Ym) of random variables. We wanted to test the correlations among the variables, then applied canonical-correlation analysis to find linear combinations of X and Y which have maximum correlation with each other.

A chi-square test, also written as $\chi 2$ test was also used for testing hypothesis. This test is a statistical hypothesis test that is valid when the test statistic is chi-square distributed under the null hypothesis, specifically Pearson's chi-square test and variants thereof. The Pearson's chi-square test is used to determine whether there is a statistically significant difference between the expected frequencies and the observed frequencies in one or more categories of a contingency table.

Results and discussion

The main findings of the testing hypothesis are showed in following tables.

Table 1: Canonical analysis summary

N=393	**Canonical Analysis Summary (DATA) Canonical R: ,52677 Chi2(42)=156,13 p=0,0000**	
	Left Set	**Right Set**
No. of variables	3	14
Variance extracted	100,000%	36,4388%
Total redundancy	14,1805%	7,46484%
Variables: 1	Recruitment	Professional knowledge
2	Selection	Quality of the work done
3	Training & Development	Performance over the set targets
4		Result orientation
5		Customer orientation
6		Company values´ orientation
7		Ability to work in team
8		Time keeping /Accuracy
9		Adaptability & Flexibility
10		Communication skills

11		Stress resistance, resilience
12		Development potential
13		Job experience
14		Relevant praxis

Source: outcome of software STATISTICA 13.5 EN

The total redundancy shows the size of correlation between the variables on left side (7,4648%) and right side (14,1805%). This value differs from canonical R2. The redundancy can be described that the values are based on all canonical variables and roots, so 14 determinants of individual performance. The results of testing show that there exists a relatively weak correlation between the bundles of variables. According to Cohen (1988), an absolute value of r of 0.1 is classified as small; an absolute value of 0.3 is classified as medium and of 0.5 is classified as large. We can state that the correlation between the ability-enhancing HRM practices and the determinants of individual performance is **large**.

Referring to the reached significance level of canonical correlation coefficient $p = 0.000$, we could state that there exists a significant relationship between the ability-enhancing HRM practices and the perceived individual performance, on the set level of significance $\alpha = 0.05$. **The hypothesis was proved.**

Table 2: Chi-Square tests

Root Removed	**Chi-Square Tests with Successive Roots Removed (DATA)**					
	Canonicl R	**Canonicl R-sqr.**	**Chi-sqr.**	**df**	**p**	**Lambda Prime**
0	**0,526771**	**0,277488**	**156,1337**	**42**	**0,000000***	**0,665205**
1	0,214310	0,045929	31,6507	26	0,205054	0,920684
2	0,187070	0,034995	13,6433	12	0,324115	0,965005

** - significant on level 5 %.*
Source: outcome of software STATISTICA 13.5 EN

Based on the data in Table 2, testing is significant on the significance level of $\alpha = 0.05$. In the 2nd row, the first and the most significant root was cleared and the next tests are not significant. We closed the testing with the result that only canonical root U1 and V1 are significant. This can be confirmed also by Figure 1, Cattel's index.

The next testing was done for factor structure for left set of variables. Based on the canonical roots testing outcomes in Table 2, we will analyse only the first root, Table 3.

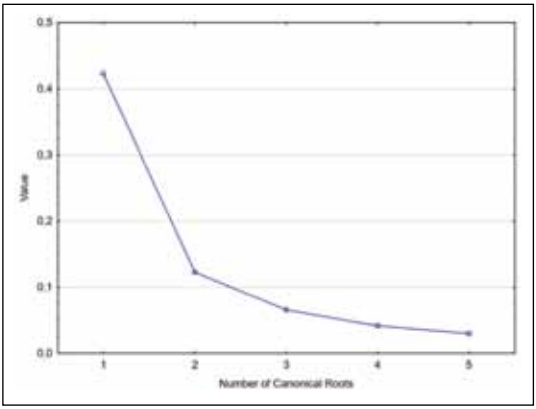
Table 3: Factor structure, left set

Root Variable	Factor Structure, left set (DATA)		
	Root 1	Root 2	Root 3
Recruitment	0,465918	-0,230474	**0,854285***
Selection	0,562442	**0,825426***	0,048279
Training & Development	**0,865275***	-0,369566	-0,338704

** - significant on level 5 %.*
Source: outcome of software STATISTICA 13.5 EN

According the Table 3, only Training & Development correlates with the first canonical root. We see that the variable „Recruitment" correlates with the "Root 2" and the variable "Selection" correlates with "Root 3". Based on the Root tests we know, that Root2 and Root3 are not significant, we do not consider this as a result.

Figure 1: Cattel's index



Source: outcome of software STATISTICA 13.5 EN

Table 4: Factor structure, right set

Root Variable	Factor Structure, right set (DATA)		
	Root 1	Root 2	Root 3
Professional knowledge	0,470924	-0,029542	-0,473262
Quality of the work done	0,212935	0,303298	-0,140473
Performance over the set targets	**0,566600***	-0,258712	0,029019
Result orientation	**0,565339***	-0,232713	-0,355160
Customer orientation	**0,568200***	-0,210265	0,282239
Company values´ orientation	**0,548887***	-0,041492	0,220066

Ability to work in team	**0,593652***	0,083565	-0,108570
Time keeping /Accuracy	**0,580555***	0,324202	0,023345
Adaptability & Flexibility	0,427450	-0,040695	-0,366146
Communication skills	0,351646	-0,256382	0,322714
Stress resistance, resilience	0,463219	-0,418502	-0,272521
Development potential	**0,623594***	0,162963	0,043450
Job experience	0,440028	-0,259668	0,043724
Relevant praxis	0,464624	0,142413	-0,067898

** - significant on level 5 %.*
Source: outcome of software STATISTICA 13.5 EN

Factor structure in the right set of variable testing is seen in Table 4. "Root1" shows relatively higher correlation values by following determinants of perceived individual performance: Customer orientation, Result orientation, Company values' orientation, Ability to work in team, Adaptability & Flexibility, Time keeping/Accuracy and Development potential.

Table 5: Correlations between right and left set of variables

Variable	**Correlations, left set with right set (DATA)**		
	Recruitment	**Selection**	**Training & Development**
Professional knowledge	0,041406	0,130024	**0,246974***
Quality of the work done	0,014831	0,115472	0,081935
Performance over the set targets	0,156478	0,122368	**0,276909***
Result orientation	0,093488	0,123124	**0,298617***
Customer orientation	0,194945	0,133699	**0,257757***
Company values´ orientation	0,171933	0,157271	**0,239526***
Ability to work in team	0,124223	0,189688	**0,270848***
Time keeping /Accuracy	0,130204	**0,229567***	**0,237462***
Adaptability & Flexibility	0,048406	0,116139	**0,221255***
Communication skills	0,150542	0,061747	0,160139
Stress resistance, resilience	0,090808	0,060749	**0,261549***
Development potential	0,151945	**0,213978***	**0,268575***
Job experience	0,127810	0,084831	**0,218361***
Relevant praxis	0,096148	0,162237	**0,204799***

** - significant on level 5 %.*
Source: outcome of software STATISTICA 13.5 EN

Testing the correlation between both set of variables is shown in Table 5. It is clear that most of the determinants of perceived individual performance could be impacted by ability-enhancing HRM practice Training & Development, except of two determinants.

This analysis we can close by a statement that significant canonical correlations between the characters in both set of variables based on the first canonical root are the result between the HRM practice Training & Development and the determinants as Customer orientation, Result orientation, Company values' orientation, Ability to work in team, Adaptability & Flexibility, Time keeping/Accuracy and Development potential. In other words, if Training & Development is considered as an independent variable, we can say that the ability-enhancing HRM practice Training & Development impacts perceived individual performance represented by characters: Customer orientation, Result orientation, Company values' orientation, Ability to work in team, Adaptability & Flexibility, Time keeping/Accuracy and Development potential.

Conclusion

Most of the studies in this area measured the opinion of managers. Our research was focusing on obtaining employee opinion on the discussed issue, so what is the employee perception on impact of HRM practices on the performance.

Based on the conducted test we can conclude that there is a positive significant correlation between the ability-enhancing HRM practices and determinants of the individual performance.

The HRM practice Training & Development, representing the ability-enhancing practices, influences the perceived individual performance represented by the following determinants: Customer orientation, Result orientation, Company values' orientation, Ability to work in team, Adaptability & Flexibility, Time keeping/Accuracy and Development potential. There was confirmed relationship between the seven determinants of individual performance out of fourteen. There is also a correlation between HRM practice Selection with the Time keeping/Accuracy and Development potential.

The key findings are related to Training & Development. This is crucial for the future of Human Resource Management, not only in IT industry. Managing Training & Development, the organizations could influence the individual performance that results in impact on the organizational performance. Organizations can focus on determinants of individual performance and set proper Trainings for employees in order to create the impact. We can see that Customer orientation could be influenced by Training. It is so simple to organize a training and provide it to employees who struggle with individual performance. However, it is not sufficient to provide employee training, more important is to manage the gained knowledge to utilize it for the company purposes. Organizations need to measure the impact of new knowledge on the company processes and outcomes. We recommend to focus also on evaluation of effectiveness of the development activities in order to measure the best the impact of investments into training and development.

The abilities are seen as basic determinants for an employee performance. In the recruitment and selection process, all organizations check the level of skills the potential employee has and whether the skills match the job requirements. When the candidate

is hired, the newcomer usually joins the adaptation program in the organization to learn about the company, values, processes, and the employee is guided into missing knowledge needed for job performance. When conditions change, the employee is provided by new training about the new technology, process or tool to be used. The abilities are the basics, so managing the abilities and the skills of employees should be the basic focus of the organizations in their journey to create competitive advantage. Focusing only on abilities is not sufficient. Organizations have to focus also on Motivation and Opportunities, according to the AMO model, as all three factors are important for managing performance to create the best impact.

We would recommend to conduct researches also about impacts of motivation-enhancing HRM practices and opportunity-enhancing HRM practices on individual performance.

The Training & Development is very important HRM practice accompanying employees through whole life-cycle in the organization. This is not just HRM practice but development and education should be a strategic approach of HRM, if organizations want to create competitive advantage. This uniqueness is possible just with the qualified and motivated employees. Organizations should keep this in mind and keep HRM as a part of the strategic management and focus.

References

1. Appelbaum, E, Bailey, T, Berg, P. and Kalleberg, A. 2000. Manufacturing Advantage: Why high performance work systems pay off, ILR Press, Ithaca, NY.
2. Armstrong, M. 2007. Řízení lidských zdrojů: nejnovější trendy a postupy. Prel. J. Koubek. 10. vyd. Praha : Grada Publishing. 800 s. ISBN 978-80-247-1407-3 Vydal: Grada
3. Bailey, T. 1993. Discretionary effort and the organization of work: Employee participation and work reform since Hawthorne. Teachers College and Conservation of Human Resources, Columbia University.
4. Baričičová, Ľ. 2018. Informačná kompetentnosť v kontexte aktuálnych potrieb informačnej spoločnosti. In Aktuálne výzvy prevencie počítačovej kriminality – zborník príspevkov z vedeckej konferencie s medzinárodnou účasťou. Bratislava: Akadémia policajného zboru v Bratislave, 2019, pp. 8-17. ISBN 978-80-8054-773-8.
5. Bencsik, A., Juhasz, T., Mura, L., Csanadi, A. 2019. Impact of Informal Knowledge Sharing for Organizational Operation. Entrepreneurial Business and Economics Review, 7(3), 25-42. https://doi.org/10.15678/EBER.2019.070302
6. Blumberg, M. and Pringle, C.D. 1982. The missing opportunity in organizational research: some implications for a theory of work performance. The Academy of Management Review, Vol. 7 No. 4, pp. 560-569.
7. Boselie, P. 2014. Strategic Human Resource management. A Balanced Approach. McGraw-Hill Education, New York, 432 p., ISBN 9780077145620
8. Nehles, A. C., Van Riemsdijk, M. J., & Looise, J. 2013. Employee perceptions of line management performance: Applying the AMO theory to explain the effectiveness of line managers' HRM implementation. Human Resource Management, 52(6), 861–877.
9. Boxall, P., & Purcell, J. 2003. Strategy and human resource management. New York: Palgrave Macmillan. 299 pages. ISBN 0-333-77820-0

10. Chang, P.C., Chen, S.J. 2011. Crossing the level of employee's performance: HPWS, affective commitment, human capital, and employee job performance in professional service organizations. Int. Journal of Human Resource Management, 22, 883-901.
11. Choi, J.-H.. (2014). The HR-performance link using two differently measured HR practices. Asia Pacific Journal of Human Resources, 52(3), 370-387. http://dx.doi.org/10.1111/1744-7941.12009
12. Elnaga, A., & Imran, A. 2013. The Effect of Training on Employee Performance. European Journal of Business and Management, 5(4), 137-147.
13. Fu, N., Flood, P.C., Bosak, J., Morris, T., & O'Regan, P. 2013. Exploring the performance effect of HPWS on professional service supply chain management. Supply Chain Management - an International Journal, 18(3), 292-307. http://dx.doi.org/10.1108/SCM-04-2012-0118
14. Harney, B., & Jordan, C. 2008. Unlocking the black box: Line managers and HRM-Performance in a call centre context. International Journal of Productivity and Performance Management, 57(4), 275-296. http://dx.doi.org/10.1108/17410400810867508
15. Ivančík, R. 2020. Cyber Threats as One of the Most Serious Asymmetric Security Threats in 21st Century, Kosice Security Revue, Vol. 10, No. 1 (2020), p. 10 – 23 ISSN 1338-4880 (print ver.), ISSN 1338-6956 (online ver.)
16. Jehanzeb, K., & Bashir, N. A. 2013. Training and development program and its benefits to employee and organization: A conceptual study. European Journal of Business and Management, 5(2), 243-252.
17. Jiang, K., Lepak, D. P., Hu, J., & Baer, J. C. 2012. How does human resource management influence organizational outcomes? A meta-analytic investigation of mediating mechanisms. Academy of Management Journal, 55(6), 1264-1294.
18. Kachaňáková, A., Nachtmannová, O., Joniaková, Z. 2011. Personálny manažment. 2. Vydanie. Bratislava: Iura Edition. 235 s. ISBN 978-80-8078-391-4.
19. Kazanský, R. & Ivančík, R. 2018. Kybernetická bezpečnosť a DDOS útoky. In Bezpečnostné fórum 2018 – zborník vedeckých príspevkov. Banská Bystrica: Interpolis, 2018, s. 185-192. ISBN 978-80-972673-5-3.
20. Korauš, A., Kaščáková, Z., Parová, V., Veselovská, S. 2017. Sustainable economic development through human resource management: social intelligence of managers and performance. In: Journal of security and sustainability issues. International Entrepreneurial Perspectives and Innovative Outcomes. Vol. 6, Issue No. 3. p. 457-478. ISSN 2029-7017.
21. Kroon, B., Van De Voorde, K., & Timmers, J. 2013. High performance work practices in small firms: A resource-poverty and strategic decision-making perspective. Small Business Economics, 41(1), 71-91. http://dx.doi.org/10.1007/s11187-012-9425-0
22. Kubeš, M. 2004. Manažerské kompetence. Zpusobilosti výjimečných manažéru. Praha: Grada. ISBN 80-247-0698-9
23. Lepak, D. P., Liao, H., Chung, Y., & Harden, E. E. 2006. A conceptual review of human resource management systems in strategic human resource management research. Research in Personnel and Human Resources Management, 25(1), 217-271.
24. Liao, H., Toya, K., Lepak, D.P., Hong, Y., 2009. Do they see eye to eye? Management and employee perspectives of high performance work systems and influence processes on service quality. J. Appl. Psychol. 94, 371-391.

25. Marin-Garcia, J.A. and Martinez-Tomas, J. 2016. Deconstructing AMO framework: a systematic review. Intangible Capital, Vol. 12 No. 4, pp. 1040-1087.
26. Mura, L., Horvath, P. 2015. Some Aspects of Human Resource Management. In: Sgem 2015, Book 1: Psychology And Psychiatry, Sociology And Healthcare, Education Conference Proceedings, Vol. I Book Series: International Multidisciplinary Scientific Conferences on Social Sciences and Arts, pp. 863-870, 2015, ISBN:978-619-7105-44-5 ISSN: 2367-5659
27. Nassazi, N. 2013. Effects of training on employee performance: Evidence from Uganda (Unpublished doctoral dissertation). University of Applied Sciences, Vassa, Finland.
28. Raidén, A.B., Dainty, A.R.J., & Neale, R.H. 2006. Balancing employee needs, project requirements and organisational priorities in team deployment. Construction Management and Economics, 24(8), 883- 895. http://dx.doi.org/10.1080/01446190600647191
29. Rankin, N. 2002. Raising performance through people: the ninth competency survey. Competency & Emotional Intelligence, January, p. 2-21.
30. Tian, A.W., Cordery, J. & Gamble, J. 2016. Staying and performing. Personnel Review, Vol. 45 No. 5, pp. 947-968.
31. Van Iddekinge, C.H., Aguinis, H., Mackey, J.D., Deortentiis, P.S. 2017. A meta-analysis of the interactive, additive, and relativeeffects of cognitive ability and motivation on performance. Journal of Management, doi:0149206317702220.
32. Van Wijk, R., Jansen, J. P. And Lyles, M. A. 2008. Inter- and Intra-Organizational Knowledge Transfer: A Meta-Analytic Review and Assessment of its Antecedents and Consequences, Journal of Management Studies, vol. 45, pp. 830-853. https://doi.org/10.1111/j.1467-6486.2008.00771.x
33. Vetráková, M. 2007. Hodnotenie prínosu zamestnancov. Banská Bystrica: Univerzita Mateja Bela, Ekonomická fakulta v Banskej Bystrici. 190 s. ISBN 978-80-8083-537-8

Authors contact:

Prof. Ing. Antonín Korauš, PhD., LL.M., MBA, Academy of the Police Force in Bratislava, Sklabinská 1, 835 17 Bratislava 35, Slovak Republic. e-mail: antonin.*koraus@minv.sk*
ORCID: *https://orcid.org/0000-0003-2384-9106*

Ing. Zuzana Kaščáková, MHR, University of Prešov, Faculty of Management, Department of Management, Konštantínova 16, 08001, Prešov, Slovakia. e-mail: *zkascako@gmail.com*
ORCID: *https://orcid.org/0000-0003-0591-1690*

Col. Ass. Prof. JUDr. Miroslav Felcan, PhD., LL.M., Academy of the Police Force in Bratislava, Sklabinská 1, 835 17 Bratislava 35, Slovak Republic. e-mail: miroslav.*felcan@akademiapz.sk*
ORCID: *https://orcid.org/ 0000-0002-4274-4417*

Poór, J. et al. (2020). Initial findings for labour markets in the Czech republic, Hungary, Poland and Slovakia. Central European Journal of Labour Law and Personnel Management, 3 (1), 47-60.
doi: 10.33382/cejllpm.2020.04.04

INITIAL FINDINGS FOR LABOUR MARKETS IN THE CZECH REPUBLIC, HUNGARY, POLAND AND SLOVAKIA

József Poór[1] – Allen D. Engle[2] – Ádám Kovács[3] – Anna Albrychiewicz-Slocinska[4] – Zdeněk Caha[5] – Vilmante Kumpikaite-Valiuniene[6] – Zsolt Horbulák[7]

[1] Faculty of Economics and Social Sciences, Szent István University,
[2] Faculty, Eastern Kentucky University, Richmond, Kentucky, USA
[3] Faculty of Economics and Informatics, J. Selye University, Komárno, Slovakia
[4] Faculty, Częstochowa University of Technology, Częstochowa, Poland
[5] Faculty, Institute of Technology and Business in České Budějovice, Czech Republic
[6] Faculty, School of Economics and Business, Kaunas University of Technology, Kaunas, Lithuania
[7] Comenius University, Bratislava, Slovakia

Received: 19. April 2020, Reviewed: 25. May 2020, Accepted: 11. June 2020

Abstract

The purpose of this article is to present a picture of labour shortages in the V4 countries. Through a sample of regional organizations, the authors outline and analyse the data obtained in two research samples. The paper begins with a general overview of the current situation of four countries in terms of labour shortages and the pattern of labour shortages among countries. By studying two regional samples, the authors outlined what economic sectors and job families have the greatest levels of labour shortage. An analysis follows and details are provided for patterns and activities in four focal countries (the Czech Republic, Hungary, Poland and Slovakia) describing the elements and forces that lead to national workforce deficits and also providing information on the practices organizations are implementing to mitigate this problem. Finally, we summarize the results and draw a series of conclusions.

Key words: labour shortages, turnover, robotization

DOI: 10.33382/cejllpm.2020.04.04

JEL classification: J21, J23, J63

Introduction

Today, the labour market is in a state of constant changes. The global economic downturn resulted in high unemployment in many European countries, which has often been followed by a sharp fall in unemployment rate. There are already Labour shortages in many areas in the labour market, and organizations are currently finding it difficult to fill vacancies, i.e. the number of shortage occupations is increasing (McGrath, 2019).

Today´s modern economy shares a growing problem of labour shortages and maintaining a sufficient work force (Kovács, 2012). Most of the industries and firms are dealing with this issue. Regional companies are facing serious challenges. There is an increasing pressure faced by the human resources managers and technical experts. They need to respond to these patterns. In the case of labour shortage, the companies have to increase salaries, because competition for recruitment of skilled workers is increasing as labour markets become regional and not merely national. Increasingly we find a deficit in a capable work force within the population, a contributing factor to critical labour shortages. In such situations, one potential future solution to the deficit could be the robotization. These technological changes result in lower value added work, and the form of work that lends itself to automation can be pursued via automation and robotization. This strategy will decrease demand for the unskilled workers and thereby eliminate job vacancies. Automation at the same time increases demand for highly skilled employees (Harari, 2018).

An adjacent problem for regional firms is the presence of greater turnover. Traditionally, employee turnover is an important performance index of human resource effectiveness. According to Gartenstein (2018), an optimal turnover rate should be around 10%. However, rising rates of turnover can lead to planning problems and performance errors, which can – in turn - inhibit companies' future success and effective operation. Therefore, it is essential to take immediate action and apply practical methods in order to handle dysfunctional levels of turnover (Boudreau, 2010).

Labour markets in the countries of the former Eastern bloc have changed significantly over the past few decades along with workers' attitudes to employers. Two or three decades ago, life-long employment at companies or organizations was typical. This is a thing of past nowadays.

Theoretical background

1.General situation of the labour shortage in V4

The unemployment has changed significantly in the Central European countries in the previous years (OECD, 2018). The development of unemployment and it´s ratio of the past nine years is visible in the following countries: Poland, Hungary, Slovakia and Czech Republic. As we have indicated that following the global financial crisis of 2008, the unemployment rate grew significantly, significant changes had been detected in this field in the past four years. The unemployment has fallen dramatically in the chosen countries. Slovakia was consistently characterized by a higher unemployment level than the EU 28 during the entire focal period. Hungary's unemployment rate was high until 2012, following this year it had decreased beyond the Polish rate of unemployment.

The number of vacant positions, i.e. the percentage ratio of the labour market tightness indicator, in the European Union is 2 percent, while in the Eurozone is 1,9 percent. The highest rate is in the Czech Republic, but Hungary is above the EU rate (Eurostat, 2017). Many factors can be listed as a cause of labour shortage, so we are outlining the typical set of factors that have the greatest impact on this region.

The labour shortage is related to a fundamental lack of employees. The situation can be caused by low salaries and low level of corporate productivity (Tóth and Nyírő, 2018).

1.1. Poland

In Poland, the rate of unemployment was 6,2% in 2016 and 4.9% in 2017 (Eurostat, 2019) It is lower than the EU28 average. Additionally, some 8% of the Polish population is working abroad, while a "shrinking" generation is entering the labour market, a generation characterized by a low birth rate. The nation's fertility rate was 1.32 in 2016 (Statista, 2019).

By far the largest percentage of employees (around 58 %) works in services (Statista, 2018). This percent slowly increased from 55% in 2018. Around 31% of the Polish employees were employed in industry and almost 11% in agriculture. These numbers slightly changed in 2016-2017. The total number of employees increased from 12,728.3 thousand in the third quarter of 2016 to 12,886.0 thousand in the fourth quarter of 2017 (Eurostat, 2019). Moreover, Poland has almost the biggest percent of long working hours in the EU. It was 12.7% (9.9% in EU28) in 2016 and 11.8% (9.6% in EU28) in 2017 (Eurostat, 2019). This percent has been decreasing since 2012, but still higher than the EU average and other V4 countries.

As a long time being a target country of immigrants and losing its qualified employees, Poland started to benefit from foreign employees, as a number of remigration is low. A recent study of Polish migrants in Germany indicated that 37.0% of the respondents intended to stay in Germany. Some 23.6% – plan to stay 10 years, 4.6 % were willing to stay 11 to 50 years, and a final 34.8 percent have not decided yet (Teney, 2019). According to Eurostat (2019), 0.3% of the total Polish population was made up of foreigners in 2016, as well as foreigners made up 0.4% of the population in 2017. Similar numbers were detected in the Czech Republic, while this ratio was 0.2% in Hungary and 0.1% in Slovakia. Around 2 million of these imported workers in Poland are from the Ukraine and Belarus.

1.2. Slovakia

As different sources indicate, Slovakia has always experienced the highest regional unemployment rate. However, the situation has improved, the difference still remains (Olšovská et al, 2016; Vlacseková, Mura, 2017). The Slovak unemployment rate is still exceeding both the average unemployment rate of the European Union and the average rate of Visegrad countries. In the analyses of Kureková (2010) prepared less than ten years ago, the main problem mentioned is the high unemployment rate of Slovakia, both in the era of economic boom and during the recession this rate used to be extremely high. Pongrácz (2018) explained this problem by citing the following factors:

- there are big differences in the regional level of unemployment,
- the unemployment rate of young people is exceptionally high,
- a great proportion of long-lasting unemployed remains an issue
- the proportion of low qualified workforce is high,
- in certain sectors there is a lack of qualified workforce,
- unemployment rate of the Roma minority is extremely high

One of the most important problems of Slovak employment market is the existence of the so called *„famine valleys"*. These regions are mostly situated on the southern and eastern part of Slovakia, where the unemployment rate is exceeding the country average twofold. In December 2017, the unemployment rate was extremely high in 14 out of the 72 small administrative units (11.88%).

The labour shortage in Slovakia is a quite new phenomenon. In 2010, Sipos emphasized that behind the success of the Slovak automotive industry was the surplus of skilled workers. Similarly to other states, Slovakia also needs more IT specialists, but the lack of professionals is much more typical in the economic sectors of real estate, health care, logistics, and in some particular occupations, such as driver, confectioner, electrical operator or kitchen staff. The situation is quite similar in every region of the state. Both the unemployment and the labour shortage simultaneously affect the country. In the Western part of the country, close to capital, there is a lack of skilled workers and labour shortage, while in the eastern region a high level of unemployment can be observed. This is an issue to be addressed.

Significant changes on the Slovak labour market started in 2014, when the number of job opportunities began to grow and the number of unemployed began to decrease. While in 2012 Slovakia had 425 thousand unemployed people, in the end of 2017 their number fell under 200 thousand (Karšay 2018).

According to an analysis by the Ministry of Labour, Social Affairs and Family of Slovakia (2018), the labour shortage is caused by high economic growth (around 4%) and low ratio of labour force entering the market (demographic reason). The analysis predicts further labour shortage in the years 2018-2023.

The second major reason for labour shortfall is the migration of Slovak workers abroad. In 2018 approximately 300 thousand Slovak citizens were working in member states of the European Union. According to research prepared by the Confederations of Trade Unions the following factors are behind the motivation of people to leave Slovakia, presented in order of occurrence: higher payment abroad, corruption in home country, political situation in Slovakia, family, better career opportunities and unemployment.

The labour shortage became visible mainly in the automotive industry. If these companies decide to establish a new plant, they immediately hire workforce with similar qualification and in high volume. The number of car manufacturing companies has risen so much that these companies are absorbing the trained workers and attracting them from competitors. Foreign labour force has also been employed in these companies since 2018. The number of foreign workers in June 2018 was 12,600 – mainly men.

The labour shortage is at the top in Slovakia with its 1% but it is still much lower than the other V4 countries. Some 6% of the population is working abroad.

1.3. Czech Republic

Traditionally the most Westernized country of the region.The country has always been the most economically developed state of the former socialist block. Czech Republic retained its historical economic heritage even after the fall of the iron curtain. The country avoided most of the problems experienced by rest of the Central Europe. The Czech Republic has never experienced deep economic crises, high indebtedness or significant increase in unemployment rate. According to analysts (Železník, 2018), the Czech labour market is considered the most efficient labour market in Europe for the last couple of years, enjoying the lowest unemployment rate.

Currently there are 215 000 - 220 000 vacancies in the country, although only 1.8% of the population is working abroad. According to the world economy survey and data, the Czech Republic has the highest the labour market tightness indicator (4,1%) in the EU (Eurostat, 2018).

One of the Czech government's objectives and aspirations is to make easier entering the Czech labour market for the foreign workforce in order to lower the labour shortage. However, company executives warn that this process could be a major barrier to robotization. The Czech Ministry of Labour and Social Affairs (2014) summarized four strategical aims: promoting access to employment, especially for groups at risk on the labour market: promoting gender equality within the labour market, promoting adaptation of businesses and employees to changing labour market needs, and the development of public employment services.

Employing foreign labour force has been a part of national employment pattern for a long time. Based on the Czech Statistical Office, some 78 thousand visiting residents lived in the country in 1993, while this number has increased to 524 thousand in 2017. We cannot avoid the fact that there are differences in unemployment rate across the country. The best situation is detected in the capital and the southern part of the country (under 2%). The worst results are in the far eastern and the far western regions (above 4%).

The lack of education and work experience of the unemployed makes active employment policy ineffective in short-term, and changes in secondary technical and tertiary education are suggested to promote smart investment in human capital (Novák et al. 2016).

The Czech labour market has similar problems as the other labour markets of Central Europe - namely the lack of technically educated graduates (Nováková 2018).

1.4. Hungary

Since Hungary has joined the European Union, the willingness and motivation of domestic workers to work abroad in order to improve their financial situation is much easier. This process has been accelerated since the Hungarian salaries have been lagging behind the regional wages in the past 15 years, also compared to the rest

of CEE countries. The employees have become aware of this issue and were trying to find a job matching their qualification in other parts of the country or abroad, where they can get higher salaries and experience higher living standard. Without qualified and available work force, the country´s economic future and the competitiveness of the business sector is endangered. The labour shortage may be indirectly linked to national tax policies (Makrogazdaság, 2018; Cseh et al., 2018).

The Labour shortage in Hungary is similar to the situation in the other V4 countries. The industry representatives believe that the labour shortage can be relieved by attracting 200-300 thousand foreign workers. Some 20 percent of foreign workers – thousands of people - stay in Hungary for a short period of time using this country as a springboard to get into other Western European countries. The opportunities offered by the country are attractive mostly among the unskilled or manual workers (Tóth and Nyírő, 2018).

Material and methods

The survey was conducted based on a previous study completed by Poor et al. (2019) and included three main parts:

- Employee turnover;
- The most difficult job positions to fill;
- The most effective methods for labour shortage fulfil.

We present the related set of problematic areas of our empirical research. The results in this section are based on surveys of 1035 organizations sample in 2016 and 2017 (see Table 1).

Table 1: The data of the 1st and 2nd survey (2016-2017)

1st survey	2nd. survey
Period 2016	Period 2017
328 respondent organization	707 respondent organization
Electronic questionnaire	Electronic questionnaire
Non-profit, benchmarking research	Non-profit, benchmarking research
Sponsored by: Pivot Co.	Sponsored bytes Co.
Professional support: Am Cham, BKIK, OHE and HSZOSZ	Professional support: OHE, HSZOSZ, BKIK, NKE

Source: Author´s own research

In 2016, there were 328 respondent organizations. The questionnaire was submitted as an e-questionnaire. In 2017, the number of respondent organizations had nearly doubled compared to the previous year, (i.e. 707 respondents were questioned) via an electronic questionnaire.

The research in both periods was benchmarking and non-profit (self-funded). In 2016 the survey was sponsored by Pivot, while in 2017 it was sponsored by TESK. The

professional support during the first survey was AmCham, BKIK, OHE and HSZOSZ, while in the second period it was also accompanied by NKE.

Results and discussion

The service sector comprises some 25 percent of the sample, but industry is also a significant part of it, with close to 25%. We also see results from the financial sector, trade and IT. The research conducted in 2017 shows respondents from public administration (50%). The industry and the service sector were represented by 10-10%, and the remaining sector was below 10%. (Note: This result is related to the fact that in 2017 our research was propagated mostly in the public administration and public services sectors.)

The other question was related to the form of ownership of firms in the sample. More than half of the surveyed organizations in 2016 were of foreign or mixed ownership (50,38%), the private domestic form of ownership was represented by 40,84% of respondents and the rest were classified as public domestic organizations. The survey conducted in 2017 shows different results. In 2017, the domestic public organizations were dominant with 57,5%, the private domestic organization´s ratio was 28,6%, the private foreign 8,9% and the mixed was 5,6%.

In the following section, we will analyse the gained data based on the number of employees in different organizations. The survey conducted in 2016 lists 328 organizations. 55% of the organizations had less than 250 employees, 20% had 251-1000 employees, and 25 percent had more than 1000 employees. The survey from 2017 reached 707 organizations - 57% had less than 250 employees, 14,2% had between 250 and 1000 employees, and nearly 30% had more than 1000 employees.

In 2016 some 44% of the firms could record a revenue under 1 billion Hungarian forints. While in 2016 the ratio of organizations with revenue between 1 and 10 billion Hungarian forints was 22,45%, this figure had decreased to 14,5% in 2017. The ratio of organizations between 10-100 billion Hungarian forints revenue was 20,82% in 2016, while in 2017 it was 15, 4%. In 2016 some 12,65% of sampled firms had a revenue more than 100 billion Forints, in 2017 some 6,6% of the organizations had more than 100 billion in revenues.

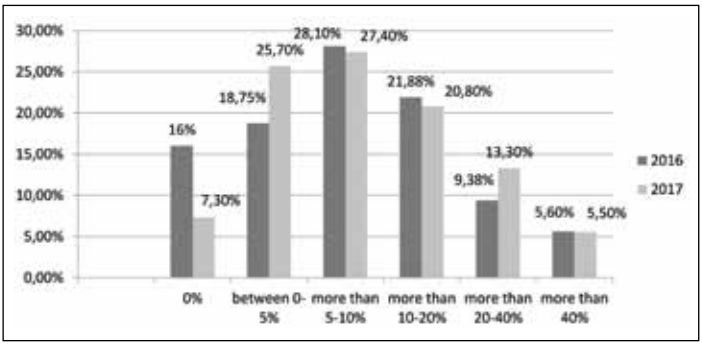
2.2. Employee turnover

The number of employees is a constantly changing parameter, one that can be modified according to the current conditions. Employee turnover is expressing the increase or redundancy of the employees, when they are dismissed or leave the company. The employee turnover in studied countries is presented in Figure 1.

As it was mentioned before, the oft-cited optimal yearly ratio of turnover is around 10% in practice (Gartenstein, 2018). If it is too low or too high, it has to be investigated why the number of employees is not changing as it should (Karriervadász, 2018). The organizations have to keep in mind that it is beneficial to consider the employee need. More functional turnover starts with the employees' satisfaction, and driven by the right motivational tools (Tóth and Nyírő, 2018).

More and more organizations (private and public organizations) recognize that replacement of an average employee costs approximately 1 million Hungarian forints, but replacement of an employee in higher position with creative mind could cost up to 0,5-1 or even 2 years' salary (Boudreau, 2010).

Figure 1: Changes in the employee turnover (2016-2017)



Source: Authors' own research

Within this complex topic area, we compare employee turnover within two different periods of time and different job levels. It is clearly seen that the employee turnover changes. We divided the job levels into five groups. The first group is the top and middle management, second group is formed by the professionals at higher level, third are the salesmen, fourth group is made up of the administrative workers and finally the fifth group is the manual workers.

It can be observed that at top management level the employee turnover is low and not significant, while at subordinate levels the turnover is higher. To summarize briefly, the employee turnover was higher in 2017 than in 2016. The research samples are from very different patterns of industries and institutional backgrounds. Our research was extended to investigation of the HR. The motivation system of the company is elaborated by the HR and applied by the manager, who can use the properly implemented motivation system even the employee decides to terminate and leave the company (Kovács, 2012). In the private sector, there are 55 employees per HR worker, while in the public sector this number is 70 employees per HR specialist. According to the research, we can conclude that this number did not increase or change. Growing employee turnover encourages the organizations to introduce leaders new ways of motivation, for example if an employee has lost interest in his/her position, and it does not feel motivated in fulfilling tasks is provided a possibility to change position. The importance of community building and the teamwork has grown. Thinking about the future, the development of replenishment programmers has become important (Kővári, 2013).

2.3. The most difficult positions to fill

Further we have investigated which positions are the most difficult to fill in for the organizations in our samples. As a first sector, industry was checked. The research sample shows a wide variety of positions difficult to fulfil. In 2016, the most difficult positions to fill in were the following: 1) technical manager positions, 2) specialized engineers, 3) mechanical engineers. According to 2017 survey results, the most difficult positions to fill were the construction worker, engineer and IT specialist. Based on the results examined during these two years, we can observe that the biggest problems in the field of fulfilling the engineer positions. Both surveys conducted show shortage in the profession of administrator and quality assurance inspector. On average, it took 11 weeks in 2016, and 20 weeks in 2017 to fill these positions in the surveyed organizations. Below we can review the most difficult positions to fill in the public sector. The most affected area is the healthcare. Positions requiring administrative and technical skills were also difficult to fill. The first three positions most difficult to fill were the doctors, vets, public healthcare workers and administrative staff. Problematic fields to find qualified employees were proved the blue-collar workers, IT specialists and engineers, jobs in construction industry.

2.4. Labour dynamics and program solutions

In 2016 and 2017 there were several underlying problems causing the labour shortage, but during both periods of time only the order of the first three places were different. The first main reason, what causes the labour shortage in the organizations was the increased competition between local labour competitors. Organizations are trying to attract each other's skilled professionals, and use different motivation tools to attract them. The next main reason is the lack of skilled employees present on the labour market; so many organizations have difficulties to fill those empty positions. The third reason is the low salary that discourages the skilled workers working in their home country when they can find well-paid positions abroad. 2016 was characterized by lack of skilled workers and low salaries, while in 2017 the priorities shifted to low salaries, tough competition between the industry players and the lack of skilled workers. The issue can be clearly demonstrated by statistics on net average monthly salaries in the EU. It was 742 Euro in Hungary, 873 Euro in Poland, 877 Euro in Slovakia and 1003 Euro in the Czech Republic in comparison to 2350 Euro in the UK, 2360 Euro in Germany and 2225 Euro in France.

Apart from the main reasons outlined above, we also note the additional problems in the educational system, unhealthy work-life balance, less unemployed and decreasing number of active workforce resulting from declining birth rates.

Problems can also be detected within the company. Some organizations are lack of efficient management and experienced leaders to have adequate knowledge about the company operations and employees. Workers get frustrated and leave for better managed firms, sometimes in different countries.

The programs offered by the companies to solve the labour shortage can be classified as wage based and non-wage based.

The wage- based programs are the following:

- development of performance evaluation and bonus system;
- transformation of the existing payment system;
- employee´s shareholding
- incorporating the experience into the remuneration system;
- Redesigning the system of fringe benefits.

Non-wage based programs to handle labour shortages include the following:

- survey regarding the employee's satisfaction and commitment;
- improvement of the working conditions;
- flexible working hours;
- Introduction and application of atypical forms of employment.

2.5. Effective methods to fulfil labour shortage

Change in the payment system and providing competitive salaries would be the most efficient way to overcome the labour deficit issue. The payment system solution is followed by performance evaluation and bonus system. An equally effective method is the application of flexible working time, so everyone can manage the worktime individually. The third most effective method can be the introduction of several employee friendly measures e.g. Long- term incentive scheme for employees, shareholding or cash plans. The next most efficient method for the employees is the introduction of program increasing employee satisfaction and commitment. Such an approach might incorporate an attractive vision, outlining the vision, involving the employees into company´s life and involve them in providing suggestions. Providing an employee-friendly work environment and the appropriate work conditions are essential steps to make the work in the company more effective. Beside the improvement of the working conditions and creating the appropriate work.

On the fourth place were the employee-tailored training and individual development plans. The organization guarantees the opportunity for the employee to progress and develop. The fifth most effective method was the development of the recruiting methods. The development of the recruiting methods can be achieved by built-in databases, workforce channels and other specialized tools. The most effective non-fringe benefits are company cars, pension and life insurance programs, extra days of paid holidays, cooperation with educational institutions robotization.

2.6. Situation in the neighbouring countries

According to our survey in 2017 (202 respondents), the labour shortage has also increased in the surrounding countries, and it is becoming more difficult to keep the employees in these focal organizations. The reduction of the fluctuation gives the organizations more and more tasks. We can observe that fluctuation is very low and not significant among the leaders, while among the employees in low positions the fluctuation became high.

The biggest problems are in the industry, the most problematic area in the organizations is to fill the engineer's positions. It is worth to mention those positions that have occurred during both surveys, like administrative positions and quality assurance positions.

The most difficult positions to fill in the public sector are a doctor or vet, administrative staff and the public health experts. Problematic areas can also be found in the blue-collar worker segment, IT leaders, engineers technical and construction engineers.

Filling positions takes 8.4 weeks on average in the surveyed four countries. The longest average periods have been observed in the Czech Republic (10.6 weeks), Hungary (10 weeks), and Slovakia (8 weeks) and in Poland (5 weeks).

The three main reasons that results in labour shortage in the organizations are the increased competition among the business in attracting skilled workforce. The next main reason is simply the lack of skilled workers so the organizations find difficult to fill the required positions. The third reason is the low salary discouraging skilled staff to stay in the country and rather leave for better offer abroad.

Changing the payment system, providing competitive salary could be the most efficient way to deal with this issue. The payment system is followed by performance evaluation and bonus system. An equally effective method can be the introduction of flexitime to make time management easier for the employee. The third most effective method can be the long-term incentive schemes or cash plan.

Conclusion

According to the research in 2016 and 2017 the labour shortage phenomenon causes an increasing and a real problem in regional organizations. Therefore, more attention has to be addressed to the labour shortage and looking for the most effective solutions to eliminate it. Programs should be developed and introduced to keep employees satisfied and motivate them to stay with the company.

According to the research in V4 countries, the results regarding the labour shortage are very similar across organizations. According to the research of the World Economy (2017), the labour market tightness ratio (4,1%) is the highest in the Czech Republic. In Hungary, the labour market tightness indicator is 2,4%, while more than 5% of the population is working abroad. In Slovakia, the labour shortage is at the top with its 1%, but it is still much lower than the other V4 countries. 6% of the Slovak population is working abroad. Meanwhile, 8% of the Polish population works in foreign countries, while generations are entering the labour market, where the birth rate was low. The proportion of foreign workers in the country is high, accounting for close 2 million Ukrainian and Belarusian workers (Eurostat, 2017).

According to the results of our empirical research, the employee turnover ratio was not significantly low among the leaders, while in lower positions, the turnover ratio was high. The employee turnover has increased compared to our research in 2016, and the turnover ratio was higher in 2017. We have also measured which positions are the most difficult to fill in the industry and in the public sector. Based on the results obtained over the two years, we could observe the biggest problem in filling engineer vacancies in the industry sector. Administrative positions and quality assurance positions were on the list of both surveys. Comparing the two periods in the public sector we can clearly state, that the biggest problem is in the health care. According to the results, the first

three places on the list are the doctors, the vets, administrative jobs and the public health care specialists.

The three main reasons that result in labour shortage in organizations are the intense competition of the employers to attract the skilled workforce. The next main reason is simply the lack of skilled workers as a general phenomenon. As a third reason might be mentioned the low remuneration system that discourages the skilled workers from working in home country and they rather leave for better conditions and higher salaries abroad (Seitz, 2017).

The organizations introduce programs and new methods to reduce the labour shortage and to keep the existing workforce. Changing the remuneration system and competitive salaries can be an efficient tool to address the issue. The performance evaluation and bonus system is an appropriate tool to retain the skilled workforce. An equally effective method is the introduction of flexitime to create convenient conditions. Long-term incentive schemes and cash plan can be the third most effective method to introduce.

Overall, we can conclude that the labour shortage has increased also in the surrounding countries, and it is more difficult to maintain the workforces in the researched organizations. The increasing employee turnover puts the organizations to an increasing number of tasks. The employee turnover is very low and not significant among the leaders, while among the employees in low positions the turnover became high.

The organizations face increased competition for the skilled workforce. Businesses successful to hire and maintain skilled workforce will be able to manage the employee fluctuation and will gain advantage in competition. The organizations showing an ability to innovate and gain benefit from the market trends will be also brave enough to utilize advantage from robotization and automation.

References

1. Boudreau, W. J. 2010. Retooling HR- Using Proven Business Tools to Make Better Decisions About Talent. Boston: Harvard Business School Publishing Corporation.
2. Cseh Papp, I., Varga, E., Schwarczová L., Hajós, L. 2018. Public work in an international and Hungarian context. Central European Journal of Labour Law and Personnel Management, 1 (1), 6 – 15.
3. Eurostat 2017. Economic forecasts. [online] [cit. 2019-05-03]. Available at: https://ec.europa.eu/info/business-economy-euro/economic-performance-and-forecasts/economic-forecasts_en
4. Eurostat 2019. Unemployment by sex and age – annual data. [online] [cit. 2019-05-03]. Available at:. http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=une_rt_a&lang =en
5. Gartenstein, D. 2018. What is a Healthy Employee Turnover Rate? [online] [cit. 2019-10-08] Available at: https://smallbusiness.chron.com/healthy-employee-turnover-rate-12145.html
6. Harari, Y. N. 2018. 21 lessons for 21st century. Budapest: Central Publishing Co.
7. Karšay, A. 2018. Concomitant phenomena of Labour shortages in Slovakia Biatec, 26 (2), 9-14.

8. Kovács Z. 2012. Moody workers: There is better solution than termination. [online] [cit. 2018-10-04] Available at: https://www.hrportal.hu/hr/rosszkedvu-munkatarsak-a-lelepesnel-van-jobb-megoldas-20130213.html
9. Kővári Z. 2013. Why your employees are not pleased? [online] [cit. 2018-10-13]. Available at: https://piacesprofit.hu/kkv_cegblog/miert-lehet-elegedetlen-a-munkavallalo/
10. Kureková, L. 2010. Human Capital: Employment and Labour Force. [online] [cit. 2018-10-15] Available at: http://alianciapas.sk/wp-content/uploads/2013/03/sspp_2010_01a_ zamestnanost.pdf.
11. McGrath, J. (2019). Analysis of shortage and surplus occupations based on national and Eurostat Labour Force Survey data Shortages and surpluses 2019. Brussels: European Commission Directorate-General for Employment Social Affairs and Inclusion Directorate D.
12. Nováková, V. 2018. Lack of Technically Educated Graduates - A Threat to the Czech Economy. Business & IT, 8 (1), 54-58.
13. Olšovská, A., Mura, L., Švec, M. 2016. Personnel management in Slovakia: An explanation of the latent issues. Polish Journal of Management Studies, 13 (2), 110-120
14. OECD (2018). Unemployment rate. [online] [cit. 2018-10-18] Available at: https://data. oecd.org/unemp/unemployment-rate.htm
15. Pongrácz É. 2018. Actual issues and situation in Slovakia economy. Hungarian Labour Review, 61 (2), 38-43
16. Poór, J., Antalik, I., Engle, A. I. (2017). Labour Shortages and Labour Retention in Key Positions in Hungary and Other CEE Countries 2017–2018. Komárno: J. Selye University.
17. Sipos M. 2010. Auto-industry in Slovakia. Budapest: Knowledge Management Department Ministry of National Economy.
18. Statista 2019. Poland - Statistics & Facts'. [online] [cit. 2019-05-03] Available at: https://www.statista.com/topics/2494/poland/
19. Szeicz, A. 2017. The employer would be in difficult situation by low wages. [online] [cit. 2018-08-05] Available at: https://piacesprofit.hu/kkv_cegblog/a-munkaado-is-rosszul-jar-a-tul-alacsony-berrel/
20. Teney, C. 2019. Immigration of highly skilled European professionals to Germany: intra-EU brain gain or brain circulation? The European Journal of Social Science Research,1-25.
21. The Economist 2017. Eastern Europe's wave of emigration may have crested. [online] [cit. 2019-05-13] Available at: https://www.economist.com/europe/2017/08/26/eastern-europes-wave-of-emigration-may-have-crested
22. Tóth, I. J. , Nyírő, Z. 2018. Labour shortage in the Hungarian public discourse. In Fazekas, K., Köllő, J., The Hungarian labour market 2017, Budapest: Institute of Economics, Centre for Economic and Regional Studies, Hungarian Academy of Sciences, pp. 57-62.
23. Vlacseková, D., Mura, L. 2017. Effect of motivational tools on employee satisfaction in small and medium enterprises. Oeconomia Copernicana, 8 (1), 111-130
24. Železník, M. 2018. Labour Market in the Czech Republic: DSGE Approach Review of Economic Perspectives, 18 (3), 225-259.

Authors contact:
Prof. Dr. Poór József, DSc., CMC, Szent István University, Faculty of Economics and Social Sciences, Páter Károly u.1., 2100 Gödöllő, Hungary. e-mail: *poorjf@t-online.hu*
ORCID: *http://orcid.org/0000-0002-6873-0646*

Prof. Dr. Allen D. Engle, Eastern Kentucky University, Department of MGT, MKT and IB 011 BTC521 Lancaster Avenue, Richmond KY 40475-3102, United States. e-mail: *allen.engle@eku.edu*
ORCID: *https://orcid.org/0000-0002-6008-8070?lang=en*

Mgr. Kovács Ádám, PhD. Candidate, J. Selye University, Faculty of Economics and Informatics, Bratislavská cesta 3322, 94501 Komárno, Slovakia. e-mail: *adamkovacs0823@gmail.com*
ORCID: *https://orcid.org/0000-0001-8477-2312*

Dr. inz. Anna Albrychiewicz-Slocinska, Częstochowa University of Technology, Faculty of Management, Armii Krajowej Ave 19B, 42-199 Czestochowa, Poland. e-mail: *slocinska@wp.pl*
ORCID: *http://orcid.org/ 0000-0002-7245-4461*

Mgr. Zdeněk Caha, MBA, Ph.D. Director of Corporate Strategy Faculty. Institute of Technology and Business in České Budějovice. Nemanická 436/7 370 10 České Budějovice, Czech Republic. e-mail: *caha@mail.vstecb.cz*
ORCID: *http://orcid.org/0000-0003-2363-034X*

Prof. Dr. Vilmante Kumpikaite-Valiuniene, School of Economics and Business, Kaunas University of Technology, Gedimino 50-211, 4249 Kaunas, Lithuania. e-mail: *vilmante.kumpikaite@ktu.lt*
ORCID: *http://orcid.org/0000-0002-8099-2737*

Ing. Mgr. Zsolt Horbulák, PhD., Comenius University, Bratislava, Slovakia. e-mail: *horbulak@gmail.com*
ORCID: *https://orcid.org/0000-0002-9862-0827*

Uhlerová, M. (2020). The role of trade unions and social dialogue during the crisis: the case of Slovakia. Central European Journal of Labour Law and Personnel Management, 3 (1), 61-76.
doi: 10.33382/cejllpm.2020.04.05

THE ROLE OF TRADE UNIONS AND SOCIAL DIALOGUE DURING THE CRISIS: THE CASE OF SLOVAKIA

Monika Uhlerová [1]

[1] Confederation of Trade Unions of the Slovak Republic

Received: 04. March 2020, Reviewed: 18. April 2020, Accepted: 06. May 2020

Abstract

The aim of the contribution is to define the approach of trade unions and social dialogue at national (tripartite) and sectoral level in Slovakia during the economic crisis and the impact of the crisis on results of collective bargaining of higher instance collective agreements. We collected data from the collective agreements in four sectors, public and civil service, education and science, metal and chemistry industry. By analysing collective bargaining at sectoral level and examining collective agreements of selected trade unions of the production and non-production sectors, we point out the minimum rates of pay increase in selected production and non-production sectors compared to chosen macroeconomic indicators during the crisis times. We try to examine the involvement of social dialogue in taking measures and solving the crisis and compare the economic crisis situation in 2008 – 2009 and during recovery with the coronavirus crisis. According to such experience we try to describe and afterwards assume the position and attitude of trade unions after the period of coronavirus crisis and developments in social dialogue (at national level) during the consecutive economic and social crisis.

Key words: social dialogue, economic crisis, coronavirus crisis, collective bargaining, trade unions

DOI: 10.33382/cejllpm.2020.04.05

JEL classification: J21, J51, J52

Introduction

The main platform for the national social dialogue is Economy and Social Council of the Slovak Republic (HSR – Hospodárska a sociálna rada SR) which has been functioning as a tripartite body of employers, employees and state representation. During the economic crisis the need for social dialogue increased. In 2008 – 2009 more than 60 anti-crisis measures were taken by government as well as consulted with social partners. Social

dialogue, communication and relation between trade unions and employers improved and resulted in consensual adoption of anti-crisis measures (Cziria, 2017). Since 2009, the tripartite negotiations had been marked considerably by the economic crisis, which had an impact on all social partners. During the period they focused on finding common solutions to decrease its effect on Slovak economy and employment. As a result, they adjusted their requirements and proposals. KOZ SR concentrated especially on the protection of employees and Slovak citizens from the economic crisis impact as well as on the creation of a network consisting of social benefits and other social measures helping the citizens to overcome problems caused by the crisis. The economic crisis placed (not only) the trade unions in a specific situation; they have to cope with new problems and challenges. At the turn of the years 2008 and 2009, the trade unions announced that they were not going to press the minimum wage increase anymore. They wanted to maintain the employment and reduce the rate of dismissal as much as possible instead. It seems to be logical as the request for a minimum wage increase would not be effective because of the impact of the economic crisis felt in the enterprises. It can be assumed that the crisis will make the social partners cooperate in order to find common solutions and measures. In the future, it can have positive impact on further relations among the social partners (both on and off the economic crisis). The cooperation could also have a positive impact on the future development of the social dialogue. The tripartism could have an important role as in the beginning of the 90s once again (Čambalíková, 2008). It can be a place, where the social partners are provided a chance to cooperate and look for implementation of common solutions to the economic crisis in order to eliminate the impacts on citizens as the tripartite mechanisms were effective especially after the war, when the Western European countries were building their national economies or during the recession period related to the so-called oil-crises associated with the growth of unemployment and inflation during the 1970s and 1980s.

Theoretical background

According to various theoretical concepts and definitions of interest groups (Grant, 1999; Shively, 2014; Sopóci, 2000; Uhlerová, 2015a) trade unions could be classified as being formal (formalised) economic (material), pressure, protectionist, sectoral, political, right interest groups that can play both the role of insiders and outsiders. They represent in particular the economic and social interests of their members (but often declare also the representation of the interests of the general public not always of a purely economic or social nature). As their primary objective is to protect mainly the economic and social interests of certain groups in society (employees, workers), we rank them among the protectionist and sectoral groups. To pursue their interests, they can also choose coercive forms, especially in a situation when bargaining and negotiations (with government, employers) fail. Since, while enforcing the interests, they come into direct contact with the political elites and institutions, the state authorities, the government (e.g. in the tripartite), they are the political (and thus by Shively, 2000, also the so-called proper) interest groups. In the spirit of the neo-corporatism model of interests mediation, the trade unions, which are granted exclusive access to the political decisions (for example through tripartite), can be considered the so-called insiders (according to the classification of W. Grant, 1999). The organisations gain the status of an insider by anchoring in the standards or special law, therefore by strengthening or "monopolising" an insider status (Kunc, 2008). At least for the last three decades, we can talk about the crisis of the trade union movement, not only in Central and Eastern Europe, although

many studies focus just on the post-communist region and functioning of trade unions in new, qualitatively different political, social and economic conditions. The crisis of the trade union movement lies primarily in companies undergoing organisational changes for the new economy; further, the crisis of trade unions is the result of a new wave of economic globalisation, which also has a psychological impact on employees' behaviour; and last but not least the trade unions are influenced by the change in the strategy of investing capital in the de-industrialisation process (Keller, 2011). There are several explanations regarding the relative weakness or strength of the trade union movement in post-communist countries. One of the explanation focuses on the aforementioned corporatist institutions, which were established according to the functioning model of the so-called Western democracies in the emerging democracies in Central and Eastern Europe, mainly from government initiatives, as the preventive measures to eliminate expected social unrest during implementation of economic and social reforms (Crowley, 2004). Research in this field (fj. Siaroff, 1999; Meardi, 2007) suggests that during the implementation of painful economic changes in the region in 90s´ one would intuitively expect a significant amount of labour unrest and intense strike activity, at least in some countries or industries, if not universally. However, the scale of protests in Central and Eastern Europe is much lower than in many recognised democracies of Western Europe (Ekiert - Kubik, 1998). The same situation was observed during the economic crisis in 2008 – 2009. Trade unions representatives prefer to be involved in social dialogue and negotiations than to organize massive protest actions. This phenomenon could be explained by neo-corporatism, a model of interest policy when trade unions participate in consultation and conciliation with government in exchange for social peace maintenance (Čambalíková, 2003). Other research in this area suggests that during the economic crisis, trade unions in the Central and Eastern Europe countries focused especially on the protection of jobs and working conditions and they managed to do so much more efficiently than countries which experienced worse economic conditions (e.g. Magda et al., 2012; Uhlerová, 2015b; Ivles – Veliziotis, 2015). This enhances the relevance of trade unions and social dialogue during the crisis period. The main task of trade unions in Slovakia during the economic crisis was to protect jobs and employment. Also results of several studies (Cziria, 2017; Ivles – Veliziotis, 2015) indicate that during the economic crisis workers in the post socialist countries were less likely than similar to lose their jobs, but more likely to experience a reduction in their working hours and salary. On the other hand, the short experience of coronavirus crisis in Slovakia as well as other countries indicates only a limited involvement of social partners, but this might be related to the acute need to adopt measures and the associated lack of time for social partner consultations in the early phases of the crisis. Future analysis will need to evaluate whether and to what extent the involvement of social partners will increase in the later stages of the COVID-19 pandemic and following economic crisis (2020, Kahanec – Martisková - Lichá). In general, in Slovakia, the trade unions have been trying to find a certain compromise among their own requirements, the expectations of citizens and their members, the current political and social situations as well as the measures of a particular government for a long time. The trade union functioning, influence and work in post-communist countries is very specific. Their influence is based especially on economic and politic principles but it also depends on actual conditions, the particular government's expectations, current political actors, a political context and ad hoc agreements (Uhlerová, 2012). We assume that this kind of unstable model of functioning will be implied also during the period after the coronavirus crisis and during the expected times of unfavourable economic and social development (Martisková

– Uhlerová, 2016). Especially, the political situation and political representation at state level and their attitude as well as experience will seriously influence the level of social dialogue and trade unions involvement in taking economic and social measures (Čambalíková, 2008).

Material and methods

The aim of the contribution is to define the attitude of trade unions in Slovakia during economic crisis and to point out the involvement, importance and position of social dialogue during the crisis. According to experience of economic crisis in 2008 – 2009 and short experience of coronavirus crisis, we try to indicate the position of trade unions and social dialogue during the social and economic crisis caused by the pandemic situation and taken measures. In this contribution, we investigate the impact of the crisis on collective bargaining at sectoral level and position of trade unions in negotiations during and after crisis. To reach the mentioned goals we had analysed the results (material benefits – wage rise) of higher instance collective agreements in four sectors: public and civil service, education and science, metal and chemistry industry. We assume that wage development negotiated in collective agreements defines the position strategy of trade unions during the crisis. Our presumption is that trade unions in Slovakia prefer to maintain employment and do not push on wage increase during the times of economic crisis. By content analysis of collective bargaining at sectoral level and examining collective agreements of selected trade unions of the production and non-production sectors we point out the minimum rates of pay increase in selected production and non-production sectors compared to chosen macroeconomic indicators during the crisis times and economic recovery. All data was obtained from collective agreements, Statistical Office of the Slovak Republic, Institute of Financial Policy, and National Bank of Slovakia. Our argumentation also leads off from research and empirical studies on trade union movement and social partnership in Central and Eastern European Countries. We assume that trade unions in Slovakia will focus on the same conditions and goals during coronavirus crisis and following economic crisis alike during the economic crisis in 2008 and 2009 and afterwards economic recovery. Findings and achievements of the study are crucial for other research in the field of social dialogue, collective bargaining and trade unions functioning in the Central European Countries.

Sectoral social dialogue and trade unions during the economic crisis

This part of the contribution consists of the analysis of chosen collective agreements of a higher degree (hereinafter referred to as the KZVS) reached from 2007 to 2014. The aim is to point out actual relationships between the selected trade unions and the employers at the sector level during the economic crisis (and onwards) and reached material benefits during observed period. The analysis deals with two trade unions from an industrial sector (The Metal Trade Union, hereinafter referred to as the OZ KOVO and the Power-Chemical Trade Union, hereinafter referred to as the ECHOZ) and two trade unions from a public sector (The Slovak Trade Union for Public Administration and Culture, hereinafter referred to as the SLOVES and The Trade Union Association of Workers in School and Science Sector in Slovakia, hereinafter referred to as the OZ PŠVS). We want to point out the situation directly before (period of economic growth) and also after the crisis as its effects could be seen until 2014.

Table 1: The chosen macroeconomic indicators and the minimum wage rates negotiated in the higher instance collective agreements (KZVS) in selected sectors in 2007 - 2014

Year	Inflation rate %	Labour Productivity %	Average wage in national economy %	ECHOZ Group A %	ECHOZ Group B %	OZ KOVO %	SLOVES civil s. %	SLOVES public s. %	OZ P□VV teachers %	OZ P□VV science %
2007	2,8	10,4	7,4	5,9	5,8	6,8	4,0	7,0	5,0	5,0
2008	4,6	3,2	8,1	-1,3	0,9	13,7	3,0	4,0	4,0	4,0
2009	1,6	-3,4	3,0	4,4	8,6	3,2	4,0	1,0	7,0	5,0
2010	1,0	23,9	3,3	2,1	1,6	3,2	1,0	1,0	1,0	1,0
2011	3,9	5,7	2,2	5,0	1,0	3,8	0,0	0,0	0,0	0,0
2012	3,6	7,1	2,4	4	1,3	3,4	0	0	0	0
2013	1,4	3,5	2,4	3,3	1,7	3,5	0	0	0	0
2014	-0,1	2,7	4,0	3,4	2,5	2,9	16eur	16eur	5	16eur

Source: Statistical Office of the Slovak Republic; National Bank of Slovakia; Collective agreements (KZVS)

From 2007 to 2014, the average inflation rate reached the level of 2.4%. The average increase in the minimum wage rates agreed to in the KZVS for the ECHOZ enterprises was just above the inflation rate (3.4% in Group A and 2.9% in Group B). In the case of the OZ KOVO and the wage increase agreed to in the KZVS for metal sector, the increase was significantly higher, at the level of 5.1% in average. It seems that metal sector was able to manage to turn favourable economic development before the economic crisis to its advantage. The average wage increase in the state and public administration did not exceed the inflation rate in the tested period, in education it has increased by 0.4% and in science, research and higher education the average wage increase was under the average inflation rate.

In 2007, the Slovak economy grew and the unemployment rate of 10.4% had been the lowest since 1994, the ratio of the annual growth of the gross domestic product amounted to 14.3% throughout the whole year, the GDP grew by 10.4% versus the 8.5% growth in 2006 and the Slovak Koruna strengthened. In 2009, the euro became the national currency. It is questionable whether the trade unions were able to take advantage of the favourable economic development since the economic growth and positive economic indicators are crucial factors of the trade union influence. The increase in the minimum wage rates agreed to in the KZVS for 2007 and 2008 in both the industrial and non-manufacturing sectors is very modest (especially in the chemical industry). It refers to the trade union inability to negotiate higher wages for their

members during the period of record-breaking economic growth. After 2008, the effect of the economic crisis became visible , particularly in the public sector. The social partners had not managed to negotiate the wage increase for the state and public administration workers since 2011. The agreed wage growth in the public sector for 2010 was at the level of inflation, thus 1%. During the economic crisis, the trade unions focused on employment maintenance at the expense of the requirements for the wage increasing. As effects of economy crisis could be felt until 2013 at least, in the years 2011-2013 the collective agreements of a higher degree for the state and public administrations did not deal with the wage rate valorisation. As a result, the real wages in the public sector fell by 8.9%.

According to the case study dealing with the content analysis of chosen collective agreements of a higher degree of selected trade unions, collective bargaining guarantees a certain wage increase, however, it is usually only at the level of the inflation rate. At the same time, it is necessary to mention that trade unions did not manage to turn the favourable economic development to their advantage. However, the trade union representatives respected the situation and did not press for a wage increase during unfavourable economic development, when they focused especially on employment maintenance.

During the crisis, trade unions focused their attention on maintaining employment in enterprises threatened by the recession. This affected the scope of collective bargaining (Czíria, 2017). In addition to standard bargaining issues – such as working time, wages and occupational safety and health, provisions to increase employment flexibility and reduce the social impacts of dismissals were added into company collective agreements. In order to minimize the impact of the economic decline on their business and workforce, some companies, mainly in the automotive and electric industries, implemented flexible working time (flexikonto and short-time working) in agreement with employee representatives. Sometimes, a reduction in the workforce was also needed. In such cases, so as to protect core workers, temporary agency workers were cut back and companies withdrew from some previously outsourced activities. Private-sector company management sought to reduce labour costs by wage moderation and cutting employee benefits and awards. In the public sector, moderate wage increases, and even a wage freeze for a couple of years, were agreed. No significant changes occurred in working time. Despite the employers' austerity measures, the social partners maintained the social peace, and collective bargaining played an important role in preventing labour conflicts. In most collective agreements, mainly signed at the company level, procedures for settling labour disputes were included.

Selected social and economic implications of the coronavirus crisis through the eyes of trade unions

Trade unions have identified several major areas of social and economic implications and risks related to the coronavirus crisis. They are linked to the closedown of borders, restrictions or closedown of shops and restaurants, limited mobility (affecting for example carriers and tourism) caused as a result of public bodies' regulations or by the decision of the operation itself due to the impossibility to ensure sufficient protection and safety for staff or due to interruptions in supplier chains. These elements have direct impact on reduction or total loss of income of many businesses and on the employment rate in

the near future. They also create immediate changes on the labour market caused by an expected increase in the unemployment rate, employee mobility (foreigners working on the Slovak labour market and their return home, return of Slovaks from abroad, migrant workers). These implications will decrease citizens' purchasing power and domestic consumption, which will slow down economic growth. The social dimension of a failure to tackle the current crisis could have short-term and medium-term effects resulting in social unrest, radicalization and polarization of the society and a wide range of negative social phenomena, e.g. executions, loss of housing, poverty, social exclusion and other undesirable pathological social phenomena (increased criminality, increased morbidity, mortality, homelessness, addictions, prostitution, etc.). Given the above, the following could be perceived as the most affected sectors: services (restaurants, canteens, hotels, accommodation facilities, hairdressers, wellness and wellbeing, tourism, etc.), industry (construction, automotive), non-essential consumption, transport, financial sector. The least affected sectors could be the tech sector (computer networks, communications, IT, science and tech devices), essential consumption and network industries. It derives from the above that the most vulnerable groups of workers from the economic perspective could be employees and sole traders working in the area of services, tourism and industry.

The Slovak legislative framework is not sufficiently prepared for an activation of efficient legal and financial tools and subsequent handling of a long-term (economic) crisis. The legal context predominantly covers short-term or ad hoc situations, which do not represent economic or social threat to affected entities (employee, employer). Therefore, the law needs to confront matters such as long-term obstacle on the employee's part (e.g. long-term care for parents who need to stay at home due to the closure of schools and school facilities), long-term obstacle on the employer's part (closedown of operations ordered by a public authority, etc.), which entails financial and existential implications (This was addressed in the amendment of Act on social insurance, which defined conditions and scope of the so-called pandemic care benefit or wage compensation due to temporary incapacity to work during a pandemic and an extraordinary situation). The Slovak legislation does not govern the so-called kurzarbeit as we know it from other European countries, however, it is called for by trade unions and employers.

However, efficiency of the adopted measures must be perceived and assessed through various dimensions of labour, namely income, job security, social security entitlement, working time, occupational health and safety, collective agreement coverage (social dialogue). As a result of the corona crisis, many workers might lose their income, that is why the measures should also aim at guaranteeing decent income to all types of workers. The closedown of operations resulted in the loss of job security, therefore, the measures should also strive to keep jobs and employment. Various forms of employment create various degrees of eligibility to social security, such as sick benefits, care benefits, unemployment benefits in the event of loss of job, pension benefits, etc. Therefore, it is important to guarantee the demands of all groups on the labour market through adopted measures. Some groups on the labour market are affected by a significant decrease in their working time, others by extreme workload and extended working time (e.g. healthcare workers, social workers, self-employed workers, employees in the business sector providing digital services or services for which demand has increased dramatically). Adopted measures must also optimize working time within the applicable law. Immediately adopted measures should prioritize regulation of social and physical

contact, provision of protective equipment, responsibility of employers and individuals. It must be assessed whether such measures really guarantee the safety and protection of health on the workplace (and outside of it). In this situation, social dialogue on the business, sectoral and national level plays a very important role. The wider the coverage of employees by collective agreements, the higher the protection and reduction of the risk that certain groups of employees will be excluded from protection and help.

Chart 1 Employment development in Slovakia 2006 – 2023

Source: Statistical Office of the Slovak Republic, Institute of Financial Policy prognosis

Chart 2 Minimum and average wage devolopment in Slovakia 2006 – 2023

Source: Statistical Office of the Slovak Republic, Institute of Financial Policy prognosis

According to the prognosis of the Institute of Financial Policy shown in the chart 1 we can assume similar unemployment curve development in 2020 and onwards as in 2009 and 2010 during the economic crisis. Chart 2 shows the minimum and average wage development before, during and after the economic crisis and anticipated development during and after the coronavirus crisis. As minimum wage in 2021 should be set as 60 per cent of average wage, in 2019 it will copy two-year delay average wage index development.

Measures to fight the virus: trade unions' approach

During the first stage of the fight against the spreading of COVID-19, trade unions in Slovakia focused on social dialogue on bilateral level (business, sectoral) and in communication with employers, they strived to set up and guarantee the highest possible level of protection and safety for employees on the workplace and in individual sectors. Employees' representatives addressed especially the matter of hygiene, proposed measures to protect employees and stop the spreading of the virus or to mitigate its impact. Furthermore, they provided ongoing information updates to their members both on a general level and with sector-specific information. This approach also focused on consultation, as the new situation brought many unexpected moments, which needed to be addressed on a legal and legislative level. Negotiations focused mainly on the use of the possibility to decrease wage compensation i.e. in the case of an obstacle on the employer's part from the statutory 100% to 60% and more in exchange for a guarantee of keeping a job by the affected employer.

However, trade unions also called for participation in the adoption of measures to fight the virus on a central level, namely in the Central Crisis Staff of the Slovak Republic, as well as through trilateral negotiations to address the economic and social impact of the coronavirus crisis. Representatives of KOZ SR (Confederation of Trade Unions of the Slovak Republic) repeatedly called for a meeting with the government, as well as for a meeting of the Economic and Social Council of the Slovak Republic (tripartite). Unlike many other European countries, the Slovak government did not invite representatives of employees to any of the discussions before adopting the so-called aid packages. Trade unions demanded engagement of social partners on all levels into the search for solutions. Discussions and negotiations with the government involved only entrepreneurs and employers, employees and their representatives were excluded. Participation of representatives of the largest economically active groups, i.e. employers and employees, in the co-creation of policies, adoption of measures and decision-making improves acceptance and legitimacy of adopted measures in the economic and social context, however, it also involves a burden of co-responsibility of all parties. According to CELSI´s research on social partners, involvement in adoption of the economic measures in 50 countries (Kahanec – Martišková – Lichá, 2020) only 20 per cent of them were created with the participation of social partners.

Measures to solve economic and social effects: trade unions' approach

In relation to the proposal and adoption of measures aimed at eliminating negative economic and social effects, the Slovak trade unions opted for two approaches. The first one consisted in analysing measures proposed by social partners, namely employers

and the government. The second approach focused on the communication of crucial requirements of employees' representatives.

On 16 March 2020, the (then) Minister of Finance Ladislav Kamenický and the Minister of Economy Peter Žiga together with Richard Sulík (the newly appointed Minister of Economy) presented a proposal of measures to mitigate economic and financial impact of the coronavirus on entrepreneurs, businesses, employers, employees and taxpayers. Presented measures were designed and discussed with employer associations without the presence of employees' representatives. From the 13 presented measures, some of them could be perceived by trade unions as efficient, targeted, well-directed, short-term and quick, oriented at immediate maintenance of liquidity of companies and at mitigation of negative economic impact of the pandemic. Such measures include the postponement of credit and mortgage instalments, short-term advantageous credits for businesses in selected sectors and investment support; postponed deadlines for the payment of tax returns and VAT, remission of fines; postponement of the payment of social and healthcare contributions for self-employed workers; wages paid to employees were exempted from social and healthcare contributions and income tax; radical simplification of conditions for the provision of contributions to maintain jobs also for small businesses and sole traders; changes in care benefits conditions and extension of the deadline to pay customs debt by 30 to 40 days.

However, immediate and targeted effect of some measures is questionable. Their effect could be seen only after some time, therefore, their content and positive impact on the current crisis remains debatable to say the least. These proposals include changes in write-offs; changes in tax loss depreciation; temporary funding of costs for supported electricity production technologies from state budget; not imposing fines to business entities if they are unable to complete a public procurement project and restriction of the performance of control activities in businesses.

On 26 March 2020, another meeting was held between employers' representatives and the Minister of Economy and Vice-president of the Government Richard Sulík on several dozens of measures. They were not public, however, their content was known. Many of them alarmed the trade unions as they restricted the rights of employees and trade unions on the workplace (as part of the so-called *Business Hundred* included in the pre-election program of the Freedom and Solidarity party favouring neoliberal economic ideas and policies of reduced state interference). The trade unions do not believe that these measures are an efficient and immediate solution to the crisis, but rather a long-term effort of certain representatives of the current political power and employers to eliminate the rights of employees and trade unions.

On 29 March 2020, the government of Igor Matovič presented seven measures entitled *First Aid* (1. The state will pay 80 percent of the employee's wage to companies whose operations had to be closed down. 2. Contributions for sole traders and employees based on sales drop. 3. Provision of banking guarantees in the amount of EUR 500 million per month. 4. 55 percent of gross income will be paid to employees in quarantine and parents taking care of their children during the entire time. 5. Postponement of the payment of contributions for employers with a sales drop of more than 40 percent. 6. Postponement of advance income tax payments in the event of a sales drop of more than 40 percent. 7. The possibility to claim unutilized losses starting from 2014).

Employees' representatives considered them unclear, of limited efficiency, speed and effectiveness, inflexible, with serious limitations that reduce the number of eligible beneficiaries and increase administrative burden. These "first aid" measures were also criticized by employers who demanded support for big employers and businesses with the highest number of employees in Slovakia. In general, employees' representatives demand a large, quick, efficient support not tied in red tape, without complicated criteria that would disqualify a part of affected entities from receiving support. The government made an unprecedented step by amending the Labour Code without discussing and consulting it with trade unions. After an immediate reaction by KOZ SR, the government repealed questionable provisions and satisfied the demands of employees' representatives.

On 3 April 2020, Igor Matovič's government presented three economic measures entitled *Second Aid for Citizens, Businesses and Sole Traders* as a result of negotiations with the Slovak Banking Association. These measures included the postponement of credit instalments by nine months for citizens; postponement of credit instalments by nine months for sole traders, small and medium-sized businesses (i.e. the so-called instalment moratorium) and an increase in the limit of contactless payments from EUR 20 to EUR 50. The first two measures allow for the maintenance of liquidity of employees, sole traders and SMEs during the crisis and postpone the payment of instalments to a later period when funds are more accessible. This requirement was also voiced by trade unions, demanding more advantageous interest rates or minimising of interest rates especially for natural persons. However, it is necessary to say that the payment of instalments is postponed, which means that they will have to be paid in the future, which might extend the length of payment of a credit (if this is possible) or increase credit instalments. Each measure that maintains liquidity in the present days will have to be paid for in the future, which might prolong the unfavourable financial situation of an affected entity.

Trade unions in Slovakia are convinced that in a crisis situation, the state must take responsibility for wages and salaries of workers and adopt a financial and social package to maintain jobs or to limit an expected increase in unemployment. The government designed its first economic and social aid measures for employees, sole traders and SMEs. That resulted in dissatisfaction of big employers (and their employees) complaining that the government has no solutions for them. The solution should not have the form of dozens or hundreds of small measures, but rather a package of several large-scale measures accompanied by a significant financial injection. As a complementary tool, already existing measures could be improved and adjusted to match the current situation with a clearly defined focus and criteria. Trade unions believe that paid compensations are not sufficiently motivating to maintain jobs.

Confederation of Trade Unions of the Slovak Republic has communicated its priority requirement in relation to the adoption of measures to eliminate economic effects of the COVID-19 outbreak on the Slovak economy, namely to adopt measures targeted at protecting jobs, guaranteeing wages and maintaining the citizens' purchasing power. KOZ SR recommended, in cooperation with other EU member states, to adopt economic and fiscal tools that would prevent the current emergency situation to turn into a global recession with catastrophic implications on workers and their families. Adopted measures should support consumption and economic recovery, which can only be done

by maintaining employees' jobs and wages, which will reflect on the support of sole traders and services. The precondition for adopting any measures designed to support business entities, companies and employers must be the protection of employees, guaranteeing their income and keeping their jobs. They must be of short-term nature with a specific validity period as well as they must be targeted and focused on affected entities. Trade unions have recommended measures to postpone credit and mortgage instalments for individuals, sole traders and small entrepreneurs, as well as reduced or zero interest rates. They have proposed to create measures related to quantitative easing and reduction of interest rates to a minimum (0% and lower), provision of temporary credits at low interest rates, credits to maintain jobs and temporarily adjust conditions of authorized overdraft in banking products. They also support measures to postpone the payment of taxes and contributions for employees, sole traders and businesses affected by the crisis. An alternative solution could be activation of measures on the principle of deductible items. Such measure could help reduce employers' costs for taxes and contributions, exempting especially the lowest wages without creating a general decrease. Given the urgent need to adopt measures, it is advisable to create criteria and administration ex post. A principle of progressivity must be included in the implementation of measures, conditioned by the maintenance of jobs. Furthermore, trade unions have repeatedly proposed a legislative setup and activation of the German kurzarbeit model, which would help employees by compensating potential lost wages by the state; help employers to keep their employees and prevent them from going bankrupt and help the state to eliminate negative effects on (not only) public finances caused by increased unemployment and restricted economic activity. This tool is currently used by several European countries to help employees, maintain jobs and keep businesses in existence.

Trade unions´ proposals to solve the crisis and restart economy

During the first days after the coronavirus outbreak, trade unions in Slovakia focused on helping employees on the workplace or in affected sectors in the area of health safety and protection, guaranteeing protective and disinfection equipment, spreading information on the new situation and provision of legal counselling. On the top (national, central) level, employees' representatives asked to convene an extraordinary trilateral meeting, which would become a platform for the discussion on economic and social measures to eliminate negative impact of the coronavirus crisis.

Within the first aid package and subsequent measures, several acts and amendments were adopted in order to extend the social net in the form of care benefits, compensating a part of wages to reduce employers' costs, forgiving the payment of contributions and postponement of various deadlines. Financial measures were adopted, for example the postponement of credit instalments, increased accessibility of credits, improved temporary protection of entrepreneurs against creditors and postponement of executions.

These measures were adopted in accelerated legislative proceedings without being first consulted with social partners. Immediately after the start of the outbreak, KOZ SR highlighted the necessity to consult individual legal acts with social partners.

Trade unions have presented their view of the measures prepared or adopted by the government together with crucial requirements focused primarily on the keeping of jobs

and income of the majority of workers. As all measures were adopted as governmental proposals in the so-called accelerated legislative proceedings, i.e. without the space for comments by experts and without any trilateral discussions, trade unions have used marketing communication tools to present their requirements, attitudes and opinions towards the public and social partners. Proposals to solve the crisis and restart the economy could be summarized as follows:

- maintaining social dialogue on all levels, participation of social partners in the search for solutions and measures
- keeping jobs and wages or their valorisation on the basis of inflation
- accepting universal, horizontal, efficient and quick measures with minimum administrative burden or moving the administrative burden to a period after the crisis (e.g. "helicopter money") so that the largest possible group of workers can benefit from the measures, with criteria being assessed ex post
- legislative definition of the so-called *kurzarbeit* and review of the unemployment insurance system
- support provided to businesses conditioned by demonstrable keeping of jobs
- beneficial interest policies and quantitative easing or reduction of interest rates to a minimum (0% or lower) for natural and legal persons
- advantageous loans provided to natural persons and sole traders by the state
- including Eurobonds in the solution and amending ESIF rules
- reviewing the system of unemployment support, material need entitlement, extension of unemployment benefits even after the end of the pandemic
- refusing to adopt measures, which do not solve the current situation and seemingly help the business environment, but without addressing the situation efficiently. Before adopting new measures, make them undergo the full standard legislative proceedings, including trilateral discussions, so that they are adopted as a result of a consensus after an expert discussion
- refusal to liberalize labour law that would result in a weakened position of trade unions and employees and reduced protection
- participation in pension, social protection system and taxes reform committees
- adjusting the labour law and the social security system to global challenges, such as digitalization, automation, robotization, climate change, demographic development, which have serious impact on the world of labour. It means legislative definition of new forms of work, adjusting working conditions and health protection to new labour market conditions – platform employment, working from home and the right to disconnect, increased number of sole traders. A new question arises on working time as a measurable performance indicator and a precondition for the setup of labour relations.
- defining tools for the restart of consumption and support of citizens' purchasing power (e.g. scrapping premium, various forms of vouchers). In order to maintain the purchasing power, it is advisable to maintain the wage level with potential valorisation, however, not at the expense of the employment rate
- valorisation of minimum wage for 2021 according the legislation (60 per cent of average wage in 2019 what is set in the Act of Minimum Wage)
- collective bargaining in public sector focused on employment maintenance, reduction of working hours and salaries valorisation according to minimum wage rise index.

Conclusion

Experience from the economic crisis in 2008 - 2009 and after recovery period suggests that trade unions will have a similar approach after the coronavirus crisis which is about to result in another economic crisis. Tripartite and bipartite social dialogue contributed to post-crisis recovery and economic growth in Slovakia, playing an important role in the adoption of all relevant documents and measures concerning economic and social development. Since the crisis, particular attention has been paid to key national policies and related economic, labour and social legislation. It can be expected that trade unions will focus on the protection of jobs and employment, maintenance of labour law standards for the benefit of employees and maintenance of the current wage levels with potential valorisation based on inflation after the coronavirus crisis during the expected economy crisis. They will try to maximize their efforts by using the legislative and institutional space enabling them to lead social dialogue especially on company level and national level. The short experience of corona virus crises has shown that trade unions emphasized their participation in consultation and legislative process as well as formal and regular social dialogue and tripartite negotiations. Trade unions in Slovakia will prefer to bargain and negotiate with social partners and government, on the other hand, lack of involvement in formal and institutional procedures may lead in protest activities. We assume that the bipartite and company level social dialogue will continue in its standard form (unless it is affected by any relevant change in the legislative framework) and the content of negotiations and collective agreements will be affected by the economic crisis.

At this place we recommend future research in this area to be focused on quality, content, effectiveness and relevance of social dialogue during the after coronavirus time and economy crisis and its influence on employment development, social and economic measures taken and social and economy recovery. In the field of trade unions functioning it will be meaningful to analyse the impact of the crisis on internal sources of trade unions (e. g. economic, personal, membership base), their behaviour and attitude considering the relevant variables and externalities as well as the influence of trade unions and social dialogue on crisis development and its impact on economy and society.

References

1. Almond, A. - Powell, G. B. 1966. Comparative Politics: a developmental approach. Boston: Little, Brown and Company, 221.
2. Ainsworth, S. H. 2002. Analyzing Interest Groups. Group Influence on People and Policies. New York: W. W. Norton&Company, 272
3. Crowley, S. 2004. Explaining Labor Weakness in Post – Communist Europe: Historical Legacies and Comparative Perspective. East European Politics and Societies, 18 (3), 394 – 429.
4. Czíria, L. 2017. Sustaining social dialogue through the crisis: the Slovakian experience. In Guardiancich, I. – Molina, O. (eds.) Talking through the crisis. Social dialogue and industrial relations trends in selected EU countries. Geneva: International Labour Organization, 213 – 231.
5. Čambáliková, M. 2002. Globalizačné výzvy sociálnemu dialógu a sociálnemu občianstvu. Sociológia, 34 (5), 445 - 460.

6. Čambáliková, M. 2003. Začlenenie a vylúčenie v období transformácie a integrácie. Sociológia, 35, (4), 285 – 306.
7. Čambáliková, M. 2008. Sociálne partnerstvo: Inštitúcia, stratégia, vízia. Sládkovičovo: Vysoká škola v Sládkovičove, 92.
8. Donaghey, J. – Teague, P. 2005. The Persistence of Social Pacts in Europe. Industrial Relations Journal, 36 (6), 478 – 493.
9. Ekiert, G. – Kubik, J. 1998. Contentious Politics in New Democracies: East Germany, Poland, Hungary, and Slovakia. World Politics, 50 (4), 547 – 581.
10. Grant, W. 1999. Insider and outsider pressure groups. Politics Review, 9 (3), 92 – 94.
11. Hassel, A. 2001. The Problem of Political Exchange in Complex Governance Systems: The Case of Germany´s Alliance for Jobs. European Journal of Industrial Relations, 7(3), 307 - 326.
12. Ivlevs, A. – Veliziotis, M. 2015. What Do Unions Do in Times of Economic Crisis? Evidence from Central and Eastern Europe. Discussion papers series, No. 9466. Bonn: Institute for the Study of Labor, 24.
13. Kahanec, M. – Martišková, M. – Lichá, L. 2020. Covid-19 Policy Response Inquiry. CELSI Policy Brief No. 13. Bratislava: CELSI, 9.
14. Keller, B. – Sörries, B. 1999. The New European Social Dialogue: Old Wine in New Bottles? Journal of European Social Policy, 9 (2), 111 - 125.
15. Keller, J. 2011. Nová sociální rizika. Praha: SLON, 197.
16. Kunc, S. 2008. Zájmové skupiny jako politický aktér. In Mansfeldová, Z. – Kroupa, A. (eds.) Proměny reprezentace zájmů po vstupu do Evropské unie. Praha: Slon, 79 – 95.
17. Magda, I. – Marsden, D. – Moriconi, S. 2012. Collective agreements, wages, and firms´cohorts: Evidence from Central Europe. Industrial and Labor Relations Review, 65(3), 607-629.
18. Martišková, M. – Uhlerová, M. 2016. Union organizing in the automotive industry in Slovakia in the times of crisis: do they help workers or protect themselves? Working papers series. Budapest: Central European University, Center for Policy Studies, 24.
19. Meardi, G. 2007. More Voice After More Exit? Unstable Industrial Relations in Central Eastern Europe. Industrial Relations Journal, 38 (60), 503 – 523.
20. Shively, W. P. 2014. Power and Choice: An Introduction to Political Science. New York: McGrow Hill, 480.
21. Siaroff, A. 1999. Corporatism in 24 Industrial Democracies: Meaning and Measurement. European Journal of Political Research, 36 (2), 175 – 205.
22. Sopóci, J. 2000. Záujmové skupiny v politickom živote spoločnosti. Politické vedy, 2 (1), 5 – 44.
23. Uhlerová, M. 2012. Inštitucionalizovaný sociálny dialóg a jeho dosahy na postavenie odborov v post-komunistických krajinách strednej Európy. Prípadová štúdia Slovenska. Politické vedy, 15 (1), 8 - 51.
24. Uhlerová, M. 2015a. Interest and Pressure Groups Politics. Banská Bystrica: Bellianum, 158.
25. Uhlerová, M. 2015b. Trade Unions Politics in Slovakia after 1989. Banská Bystrica: UMB, Bellianum, 163.

Author contact:
PhDr. Monika Uhlerová, PhD., Confederation of Trade Unions of the Slovak Republic, Odborárske námestie 3, Bratislava, Slovakia. e-mail: *uhlerova@gmail.com*
ORCID: *https://orcid.org/0000-0001-8412-6388*

Žuľová, J., Kundrát, I. (2020). Service of documents in employment relationships during the employee quarantine. Central European Journal of Labor Law and Personnel Management, 3 (1), 77-88.
doi: 10.33382/cejllpm.2020.04.06

SERVICE OF DOCUMENTS IN THE CONTEXT OF EMPLOYMENT DURING EMPLOYEE QUARANTINE

Jana Žuľová[1] - Ivan Kundrát[2]

[1] Pavol Jozef Šafárik University School of Law, Košice, Slovakia
[2] Pavol Jozef Šafárik University School of Law, Košice, Slovakia

Received: 03. February 2020, Reviewed: 22. March 2020 Accepted: 10. April 2020

Abstract

The legal regulation of quarantine imposed on an employee is limited in the Labor Code (Act No. 311/2001 Statutes, the Labor Code, as amended, hereinafter referred to as the Labor Code), to the framework regulation of legal consequences of quarantine in labor relations. A number of labor-related problems arising from the SARS-CoV-2 coronavirus epidemic causing COVID-19 will, therefore, have to be addressed by interpreting the legislation in force for the purpose of its practical application, as it had been previously considered to be of rather a theoretical nature. The paper deals with the partial problem of the service of documents in labor relations during the employee quarantine. It identifies what is served, it analyzes the correctness of the employer's procedure when it automatically relays the delivery task to the postal service, and it clarifies the interpretation of the term "last known address" in the context of its change as evidenced from the proof of temporary incapacity for work stemming from a quarantine imposed on the employee. The aim of the paper is to discuss the practical aspects of the service of documents in the labor context at the time of the current situation of the spread of coronavirus epidemic. In terms of the methodology, the paper is based on critical in-depth analysis of the current legal framework, descriptive method and scientific cognitive methods.

Key words: quarantine, service of documents, document, postal service, employee address

DOI: 10.33382/cejllpm.2020.04.06

JEL classification: J50, E24, L87

Introduction

The Labor Code regulates quarantine as one of the important personal obstacles to work on the part of the employee. Pursuant to § 141 para. 1 of the Labor Code, the employer shall excuse the absence of the employee at work during quarantine. During this time, the employee is not entitled to wage compensation, unless a special regulation

provides otherwise. Until now, this has been an obstacle to work rarely happening in practice (Brooks et al., 2020.). Quarantine is one of the types of quarantine measures pursuant to Act no. 355/2007 Statutes on the Protection, Promotion and Development of Public Health, as amended. Increased health surveillance, medical supervision or quarantine may be imposed on a person suspected of infection. Detailed conditions of the regulation of these quarantine measures are set out in the Decree of the Ministry of Health of the Slovak Republic no. 585/2008 Statutes, laying down details on the prevention and control of contagious diseases, as amended. The provision of § 250b par. 5 of the Labor Code, effective as of April 4, 2020, forming a part of special provisions adopted in response to the coronavirus epidemic that apply to an emergency situation, state of emergency or an extraordinary situation (the new, eleventh part of the Labor Code), in addition to § 141 para. 1 of the Labor Code, obliges the employer to excuse the employee's absence at work also during the employee's quarantine or isolation. If the employee has been ordered a quarantine and does not have income, which is considered as the basis of assessment under a special regulation, i.e. pursuant to Act no. 461/2003 Statutes on social security, as amended, the employee is entitled to a benefit under Act no. 462/2003 Statutes on compensation of income in case of the employee's temporary incapacity for work, as amended.

An important question related to the employee's labor rights, as well as the solution of the labor problems resulting from the quarantine imposed (Ramesh, Siddaiah, Joseph, 2020), is the question of the exercise of will, since it produces legal effects only if the addressee is involved. Service of documents is one of the ways for the manifestations of will for reaching the addressee's realm. In some cases stipulated by law, service of documents is a substantive condition for the validity of legal acts. Service of documents in the labor context is regulated by § 38 of the Labor Code, which distinguishes between the manner of service of documents when it is done by the employer and by the employee (Sedliacikova et al., 2020). The service of documents by the employer is much more formalized and criticized more often for deficiencies with serious consequences for the validity of the legal act (Švec, Mura, Madleňák, 2017). The importance of the topic is emphasized by the specifics of the current situation that due to the spread of an epidemic has not been foreseen by the law.

Theoretical background

The provisions of § 38 of the Labor Code apply to *"written documents of both the employer and the employee concerning the establishment, alteration and termination of employment or the creation, change and extinction of the employee's obligations under the employment contract. The same shall apply to documents relating to the establishment, alteration and termination of rights and obligations arising from „other-than-employment work contract."* (Hereinafter referred to as the establishment, alteration or termination of the rights and obligations of the parties to employment relations.) Documents the service of which is subject to the provisions of § 38 of the Labor Code are listed in an exhaustive manner, and it is clear from the first glance that the material scope of the said provision is very wide. It is much easier to find examples of written documents that are to be subject to the rules of service of § 38 of the Labor Code than those that can be excluded from this mechanism (Olšovská, Laclavíková, 2019). Extensive interpretation of the material scope of the cited provision also underlines the fact that a written document is not only a legal act, i.e. a manifestation

of will aimed mainly at the establishment, alteration or termination of those rights or obligations associated with such manifestation (e.g. a termination notice), but also the so-called factual act, which is a substantive prerequisite for a legal act (e.g. a written notification of the possibility of dismissal for a less serious breach of work discipline pursuant to § 63 para. 1 (e) of the Labor Code).

The employer is obliged to ensure compliance with the correct service procedure pursuant to § 38 of the Labor Code, regardless of whether an emergency situation, a state of emergency or an extraordinary situation has been declared. All documents subject to the provisions of § 38 of the Labor Code shall be served by the employer to the employee into the latter's own hands. The provision of § 38 of the Labor Code explicitly mentions only two methods of service into one's own hands: direct (personal) and through a postal service. Direct service takes precedence over postal service. The employer may choose a postal enterprise to carry out the service of a written document if direct service is not possible (Olšovská, Mura, Švec, 2016). It is, therefore, necessary to analyze whether an imposed quarantine is a condition which makes the direct service objectively impossible.

Consequently, if the employer engages the postal service, it is the duty of the employer to ensure such service complies with the provision of § 38 par. 2 of the Labor Code. The documents served through the postal service shall be sent by the employer as a registered mail with a receipt of acceptance and a note *"into the addressee's own hands"*, to the employee's last address known to the employer. The Labor Code explicitly instructs the employer to request two specific additional services from the postal service in addition to the mail being registered: namely a receipt of acceptance and the service into the addressee's hands. Through the receipt of acceptance, the postal service shall obtain a proof of service of the consignment to the addressee (the employee). The postal service shall return (deliver) the receipt of acceptance to the sender. Provided all the postal conditions have been met, such receipt of acceptance is a public instrument. With regard to the service of documents into one's own hands, it is either the sender itself who makes a note *"into the addressee's own hands"* on the face of the consignment or it shall request such service verbally upon delivering the registered consignment for postal carriage according to the postal conditions (see below).

An equally important condition of a perfect service for legal purposes is sending of a written document to the employee's last address known to the employer (§ 38 para. 2 of the Labor Code). If the employer sends the written document to a different address, the effects of service will only take place if the employee, despite such deficiency, accepts the document from the postal carrier. However, if the written document sent to the wrong address is not accepted by the employee, the effects of service of the document cannot occur. It is the employee's duty to notify the employer of the address (or changes thereto) to which the employer is to serve written documents. This obligation has long been inferred from the legislation by judicial practice (Pokorný, 1980). With effect as of September 1, 2011 (Act No. 257/2011 Statutes, amending Act No. 311/2001 Statutes, the Labor Code, as amended) one of the basic employee duties according to the provision of § 81 (g) of the Labor Code is the latter's obligation to notify the employer in writing without undue delay of any changes relating to employment and related to the employee, including, inter alia, the change of the address for service of documents (Korauš, et al., 2019). In this respect, the problem of determining the correct address

for service of documents should be addressed if the employee's address changes as a result of the measures taken to prevent the spread of coronavirus. It can be mentioned that according to the measure of the Public Health Authority of the Slovak Republic of April 4, 2020, addressing the threat to public health, issued under no. OLP/3012/2020, *"all persons who enter the territory of the Slovak Republic as of April 6, 2020 after 7.00 a.m. shall be ordered to isolate in facilities designated by the State for the time necessary to carry out the COVID-19 laboratory diagnosis and, following a negative result, the person shall be ordered a home isolation for a total cumulative period of 14 days."* At the same time, under that measure, such a person and persons living together with that person are to be *'issued a sick leave document due to the quarantine for COVID-19'.*

Material and methods

The aim of the paper is to discuss the practical aspects of the service of documents in the labor context at the time of the current situation of the spread of coronavirus epidemic. A legally perfect service of documents to an employee requires a number of formal conditions to be met. Their observance in serving documents to a quarantined employee cannot be forgiven, but the interpretation of the relevant legal provisions must take into account, as should be the situation. As part of this paper's partial goals, we are addressing what is being served, by whom, in what manner, and where.

We used several primary and secondary sources in our research. The primary sources were the Labor Code, related legal regulations and the measures published on the website by the Government of the Slovak Republic, state administration authorities and the Slovak Postal Service related to prevention of the spread of coronavirus. We also worked with the scientific opinions on the topic published so far. We followed up on relevant sources from other scientists who published their opinions in scientific papers registered in recognized scientific databases. Equally important primary source of our research were court decisions of both the Slovak and Czech courts, regulating issues of service of documents in labor relations. The decision of the Supreme Court of the Czech Republic of June 23, 2015, was subjected to scrutiny, documented in the file no. 21 Cdo 3663/2014, related to the interpretation of the concept of the last address known to the employer.

We used secondary sources when primary sources were not available. The unavailability of the primary sources was due to a longer period since their formation. For that reason, we used a proceeding of the judicial practice and a contemporary journal.

Qualitative scientific methods were used for discussion of the above-mentioned issues: critical in-depth analysis of the current legal framework, descriptive method and scientific cognitive methods. Those scientific methods were used because the rules on the service of documents, which are general, should be interpreted after a thorough review, considering the specificity of the situation of the employee on who a quarantine was imposed.

Results and discussion

First of all, it is necessary to answer the question of what is being served and, therefore, to draw attention to what is considered a written document. Within the meaning of § 38 of the Labor Code, a written document shall mean any legal act executed in writing and any other (de facto) written act relating to the establishment, alteration or termination of rights and obligations of the parties to labor relations, i.e. the service of documents provision is satisfied by instruments executed in writing as manifestation of the respective party's will. It is necessary to realize that if the Labor Code allows legal act to be completed in a verbal form (as an example we could mention termination of employment during the probationary period according to § 72 of the Labor Code), it is not necessary to execute the same in writing only to satisfy the wording of § 38 of the Labor Code. The wording of § 38 of the Labor Code does not apply to verbal legal and factual acts relating to the establishment, alteration or termination of rights and obligations of the parties to labor relations, because the manifestation of will is not in writing and thus cannot be considered a written document. If we accepted the opposite view, we would contravene the very essence of legal acts in verbal form and we would grant the § 38 of the Labor Code a power that would in fact oblige the employer to record its verbal expressions of will in writing, in spite of the Labor Code not making such injunction. The legal effects of unilateral legal acts consistent with the law in verbal form cannot be associated with their eventual additional written confirmation and subsequent service of the same. However, please note that as soon as the employer makes a legal act in writing, and it is not at all critical whether the law prescribes it in writing under penalty of invalidity or not, the legal act is a written document and if it concerns the establishment, alteration or termination of rights and duties of the parties to employment relations, it shall be governed by the service of documents regime pursuant to § 38 of the Labor Code. Even if the legal act was validly performed verbally or implicitly, the decision of the employer to execute this legal act in writing obliges it at the same time to follow the procedure of service pursuant to § 38 of the Labor Code (Bělina et al. 2015).

Furthermore, what needs to be addressed is the precedence of the service in person. Pursuant to § 38 para. 1 of the Labor Code, direct (in person, hand-to-hand) service at the workplace, in the employee's apartment or wherever the employee can be reached takes precedence over the service by post. The executive right of the way of direct service is not just declarative. It is the responsibility of the employer to ascertain and claim that, at the time the consignment is handed over to the postal carrier, there were circumstances preventing the employer from serving the document in question directly (itself). If the employer proceeded with the service of document through the postal carrier and the service could have been made by the employer at the employee's workplace, in their apartment or wherever the employee could be reached, such service is contrary to the provisions of § 38 of the Labor Code (see the ruling of the Supreme Court of the Czech Republic issued under no. 21 Cdo 1350/2009 of July 17, 2010 and the ruling of the Supreme Court of the Czech Republic issued under no. 21 Cdo 4188/2011 on February 20, 2013). It is necessary to assess whether the employee's quarantine constitutes a circumstance that makes it justified to deem the direct service of written documents impossible. Based on the fact that during quarantine, a person suspected of being infected is ordered isolation and limited contact with their environment, we consider this to be an objective situation justifying the employer's actions of proceeding with the service of documents directly through the postal service.

In view of the employer's activity, where it would have otherwise carried out the service in person, this conclusion, stemming from the current situation, is supported by the recommendation of the Central Crisis Management Cell of the Slovak Republic and the Public Health Authority of the Slovak Republic to limit mobility outside one's residence to that involving only the necessary movement, in addition to the current resolution of the Slovak Government no. 207, 72/2020 Statutes, by which the Government of the Slovak Republic restricted the freedom of movement and residence between April 8, 2020 0.00 a.m. and April 13 April, 2020 11.59 p.m. by imposing a curfew. We also believe that, from the point of view of health and safety at work, the employer cannot require of its employees, who otherwise carry out the service of documents in person (managers or authorized employees) to expose themselves to the risk of contracting a disease through direct contact with the person who has been ordered a quarantine. In addition, if in the event of a dispute it is later proven that the document had actually been accepted by the employee themselves, the possible mistake of the employer in favoring the postal service over service in person becomes obsolete and has no legal significance whatsoever.

In the context of postal service, a frequent question is whether the employer can use courier and mail-order companies to serve a document to an employee. The provision of § 38 of the Labor Code was amended by Act no. 257/2011, amending and supplementing the Labor Code and the term postal service has been replaced by the broader term postal enterprise, due to the diversity of entities providing postal services. The register of postal enterprises is kept by the Office for Regulation of Electronic Communications and Postal Services. As of April 8, 2020, the above Register has listed 26 postal enterprises providing postal services pursuant to Act no. 324/2011 Statutes on Postal Services as amended (hereinafter referred to as the Postal Services Act). Ultimately, however, the employer does not have the choice to appoint any postal enterprise. The Labor Code requires the employer to serve the written document as a registered letter, which is a mail delivery service with an additional consignment *"registration"* service attached thereto, providing a flat-rate guarantee against the risk of loss, theft or damage of the respective consignment, where a proof of such service provision is issued to the sender and, upon request, so is a receipt that the consignment has been accepted by the addressee, i.e. the receipt of acceptance (§ 3 par. 3 of the Postal Services Act). This means that the employer must choose to serve the document through such postal carrier that provides the postal service in question and in accordance with § 38 par. 5 of the Labor Code, to respect the conditions of a special law, i.e. the Act on Postal Services, governing this manner of service. Distribution of the registered consignment is part of the so-called universal postal service, which is provided under a postal license. The postal license can be applied for by any postal enterprise, but at the moment, the only holder of this license is Slovenská pošta, a. s. (hereinafter referred to as *"Slovak Postal Service" or "postal service"*). This means that if the employer proceeds with the service of documents through a registered letter, the only postal company fulfilling the conditions for the collection and distribution of the registered letters is, in accordance with the Postal Services Act, the Slovak Postal Service. In the following text of the paper we will also use the valid postal terms and conditions of the Slovak Postal Service applying to its domestic services effective as of January 1, 2020 (hereinafter referred to as the postal terms and conditions).

The Slovak Postal Service has introduced several protective measures to prevent the spread of the epidemic (based on the state of the measures adopted as of April 10, 2020). There is a special regime for consignments with the additional services of *"Receipt of Acceptance"* and *"Service into Own Hands"*. Service in which personal contact is required has been stopped and these consignments are deposited at post offices. The addressee is given a notification of the consignment (so-called yellow slip) in their mailbox. In case of electronic consignment notifications, they receive the electronic notification sent to their e-mail address or a text message. These types of consignments are handed over at the post office, and the original pickup period (18 calendar days) of these so-called notified consignments is automatically extended by a further 14 calendar days, without a service fee charged to the addressee. The day of notification of deposit of the document at the post office is not included in the pickup period. If the document has not been collected within this period, the Slovak Postal Service returns it to the sending employer as undeliverable. Pursuant to § 38 par. 4 of the Labor Code on the day the postal service returns the written document to the employer as undeliverable (not the last day of the pickup period), one of the fictions of service applies and the obligation of the employer to serve the written document is deemed fulfilled.

In relation to the length and futile expiration of the pickup period, there is a problem in practice of maintaining the legal effects of the manifestation of will captured in the document served. In order for a legal act to produce legal effects at a certain time, it must be served to the other party before its expiry. The automatic extension of the employer's consignment pickup period by another 14 calendar days has thus a significant impact on the employer, while staying in line with the protective function of labor law. The situation is regulated if the employee's quarantine lasts longer than the 14 days expected, in order for the employee not to mar the service unwittingly.

As we have already mentioned, the employer serves the written document to the employee's last address known to the employer. In connection with the measures taken by the Public Health Authority of the Slovak Republic to prevent the spread of coronavirus, persons and their family members may, depending on the situation, be ordered isolation either in state-designated facilities or at home. The employer is then informed of the address at which the employee is staying from the proof of temporary incapacity for work issued on the form specified by the Social Security Agency pursuant to § 233 para. 2 (d) of Act no. 461/2003 Statutes on social insurance as amended (temporary incapacity for work is pursuant to § 33 par. 1 of this Act a legislative abbreviation for temporary incapacity for work, quarantine measure and isolation). It is necessary to consider whether the submission of a form indicating a different place of residence of the employee than previously known to the employer also changes the address for service of documents without any further obligation and whether the employer is obliged to serve the documents at this *"new"* address only. We believe that it is not a predetermined duty of the employer to serve documents at this address only, but that in certain circumstances the legal effects of the service will also occur when the service is done at the employee's original address. We are fully aware of this statement contradicting the conclusions of the decision of the Supreme Court of the Czech Republic of June 23, 2015, issued under no. 21 Cdo 3663/2014 ('R 25/2016'), which can apply to the service of documents to a quarantined employee by analogy. In the cited decision, the Supreme Court of the Czech Republic stated

that *"if an employee is staying at an address unknown to their employer while vacationing, during their temporary incapacity for work, their caring for a member of their household, during their military service or other similar reasons) the employer may serve its documents to the employee through the postal carrier at that 'temporary address' only; service at another address is ineffective even if the employee is otherwise (at another time) present at it"*. In the conditions of the Slovak Republic, in its judgment of March 29, 2016, issued under no. 11 CoPr 6/2015, the Regional Court in Žilina confirmed in a similar vein that the employee had fulfilled their obligation to notify the employer of any changes relating to employment and related to the employee by having submitted a proof of temporary incapacity to work to the employer.

If we assume that the employee is staying (albeit temporarily) at a new address, as a result of which they cannot objectively accept the documents at their original address, and the employer is aware of this fact, then it cannot really be accepted if the employer sends the document to the original address and invokes the fiction of service clause. On the other hand, we believe that it cannot be strictly assumed that the fact that the employee is staying at the new address precludes, and a priori rules out, the employee's ability to accept the documents at their original address or that the documents must, therefore, be sent to the new address exclusively. Even if the employee does not stay at a certain place, the purpose of service (i.e. the actual receipt of documents, not only the application of the fiction of service) can still be fulfilled if another person accepts the document at that place. Thus, this problem is closely linked to the question whether a person other than an employee can accept the document designated to be served to the employee's own hands.

The Labor Code does not specify who is entitled to accept the document designated to be served into the addressee's own hands. Pursuant to § 38 para. 5 of the Labor Code, however, the conditions under a special regulation (the Postal Services Act) must be met when service of documents is done by a postal enterprise. The Postal Services Act, in turn, refers to the regulation contained in the postal terms and conditions (§ 27 of the Postal Services Act). Consequently, the fulfillment of the obligation to serve a written document into one's own hands must be interpreted in the light of the postal terms and conditions. In older case-law (e.g. judgment of the Supreme Court of the Czechoslovak Republic of December 27, 1982, issued under no. 6 Cz 34/81, judgment of the Supreme Court of the Slovak Socialist Republic of May 26, 1975, issued under no. 3 Cz 12/75), it was concluded that if the consignment had been accepted by a person other than the employee (e.g. the employee's spouse, parents or other family members living with the employee in the same household), the obligation of the employer to serve such document had not been met, even if the consignment was later demonstrated to have been handed over to the employee (Barancová, 2015).

However, we believe that the case-law in question must now be regarded as outdated following a change in the rules to the postal terms and conditions. According to the postal terms and conditions (or the Code of Postal Services at that time) of the past, the consignment was to be served only to the addressee and no one else, with no exception granted even to the addressee's spouse, their substitute recipient or their proxy (Kottnauer, A. 1984). At present, the situation is different - according to the postal terms and conditions, the addressee may authorize another person to accept the consignment addressed to them, while the scope of the authorization may be

defined to include accepting consignments designated to be served into one's own hands. The option is to grant a power of attorney for all legal acts with an officially certified signature, which is also considered to be a power of attorney for the acceptance of consignments, including consignments to be served into *"one's own hands"* or to have an ID issued to one's proxy by the Slovak Postal Service upon request against a fee, which must expressly indicate the permissibility of accepting consignments to be served to *"one's own-hands"*.

If the postal conditions allow an employee to authorize another person to accept the consignments addressed to the employee's own hands, then the case-law, which strictly requires the document to be accepted by the employee exclusively, cannot be maintained. The case-law in question has lost the support which it originally had in the postal terms and conditions. Consequently, it cannot be insisted on the fact that an employee's stay at a new address precludes, and a priori prevents them from accepting documents at any other address. The document can be effectively accepted at another address by a person authorized by the employee to accept consignments addressed to their own hands. It can be assumed that the employee authorizes another person to accept consignments precisely because they cannot (or will not be able to do so in the future) or do not want to accept the consignments themselves. From that point of view, the place where the employee is staying will not be critical for the purposes of service. In this context, the position presented in Decision R 25/2016 is questionable, namely that 'if the employer gradually acquires more information about the employee's address, it shall (may) serve the documents to the one of the several addresses of which it has learned last', hence the 'last address of the employee' known to it. (...) Likewise, only a 'temporary address' is important in terms of service of the employer' s documents, but (of course) only for the period during which the employee stays at that address (according to the employer 's knowledge) or is supposed to stay there.'

We are heading to a conclusion that if the employer gradually acquires more information about the employee's address, the temporal aspect cannot be considered as an exclusive criterion for determining the address for service of documents. We accept that the Labor Code (§ 38 para. 2 ZP) requires the employer to send documents to *"(...) the last address of the employee known to it (...)"*. Nevertheless, we believe that the term 'last' is not the primary attribute of the term (it is to be primarily 'the address of the employee'), it cannot be understood in its absolute sense and, moreover, cannot be formally based solely on the linguistic interpretation. On the contrary, it should be borne in mind that the purpose of service can be achieved at the address where the acceptance of the document served is ensured, including by way of a proxy. If an employee wishes to have documents served at such address, their will must be respected, of course, provided that their will is known to the employer. In that sense, the term 'employee's address' does not necessarily refer to the address at which the employee is staying but also to the address to which the employee wishes to have their documents served. Lastly, the term 'last address' does not refer solely to the address last known to the employer; this expression only reflects the current address.

What we have said is not to indicate at all that, in general, it is necessary (or possible) to send documents to an address at which the employee is not present, with the expectation that they will be accepted by their proxy. However, if an employee informs the employer that they wish to have the documents served to a particular address,

the effects of such communication must be interpreted rationally. We generally consider the conclusions of the Decision R 25/2016 to be acceptable, but with the addition that the employee's temporary, address notified to the employer as their last is the address for service, unless the employee has explicitly designated another address for service of documents. In view of the above, we believe that the earlier knowledge of the employee's address takes precedence over the newer knowledge if the employee explicitly designates such address for service of documents (in addition to the address of their permanent residence, temporary residence, etc.); if it is clear from other circumstances that the employee wishes to have the documents served exclusively at a specific address. In such case, it is up to the employee to ensure the acceptance of consignments at such address, e.g. also by a proxy. If, in such a situation, the employee later submits to the employer a proof of temporary incapacity for work stating a different address of the employee's whereabouts, there is no change in the address for service of documents. We believe that, following an employee's express manifestation of desire to specify the address for service of documents, the change of such address must also be made by express notice, i.e. the employee must explicitly state that they wish to change the address of service of documents. If this is not the case, the employer may reasonably rely on earlier knowledge of the employee's address.

Conclusion

In accordance with the provisions of the Labor Code, the employer shall serve the documents specified in § 38 par. 1 to the addressee primarily in person (directly), and secondarily through a postal enterprise. Unjustified preference for postal service over personal (direct) service may result in invalidity of the service. However, the analysis carried out suggests, in practice, that an imposed quarantine is an objective reason due to which the employer may refrain from direct service and proceed directly to service through a postal enterprise. To this end, the employer may choose only such postal enterprise as is capable of delivering registered mail with the additional service of providing the *"receipt of acceptance"* and the service *"into one's own hands"*. Under the conditions of the Slovak Republic, only one postal operator, namely the Slovak Postal Service, has a monopoly for such service. Curtailing the service conditions of registered mail due to the spread of coronavirus has extended the time limits for consignment pickup, a condition the employer has to count with. For this reason, we recommend employers to send the document well in advance, because if the act is to produce legal effects within a certain time frame, it must be served to the other party prior to its expiration. Finally, a legally perfect service in labor relations requires the document to be served at a correct address of the employee. Such address may be different from the usual one due to an imposed quarantine. The employer shall be informed of the address at which the employee is present during the quarantine from the proof of temporary incapacity for work. We believe that without further submission, as has been explained in the present paper, providing such a proof cannot be considered an a priori change in the address for service of documents. In this context, in practice it is necessary to examine whether the employee has explicitly designated another address for service of documents.

Acknowledgement
This scientific paper was published under the frame of scientific agency APVV, research project No. 16-0002: Mental Health in the Workplace and Employee Health Assessment.

References

1. Barancová, H. 2015. Zákonník práce. Komentár. 4. vydanie. Praha: C. H. Beck, 1240.
2. Bělina, M., Drápal, L. a kol. 2015. Zákoník práce. Velké komentáře. 2. vydání. Praha: Nakladatelství C.H. Beck, 1613.
3. Brooks, S. K., Webster, R. K., Smith, L. E., Woodland, L. Wessely, S., Greenberg, N. Rubin, G. J. 2020. The psychological impact of quarantine and how to reduce it: rapid review of the evidence. LANCET, 395 (10227), 912-920. [online] [cit. 2020-03-25]. Available at: https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30460-8/fulltext.
4. Kottnauer, A. 1984. Doručování důležitých písemností v pracovněprávních vztazích. In Práce a mzda, 32 (13), 37-38.
5. Korauš, A., Dobrovič, J., Polák, J., Backa, S. 2019. Security aspects: Protection of people in connection with the use of personal identification numbers. Journal of Security and Sustainability Issues, 8 (3), 319-330.
6. Olšovská, A., Mura, L., Švec, M. 2016. Personnel management in Slovakia: An explanation of the latent issues. Polish Journal of Management Studies, 13 (2), 110-120.
7. Olšovská, A., Laclavíková, M. 2019. Doručovanie v pracovnom práve v ére moderných technológií. In Nové technológie a ochrana zamestnanca. Praha: Leges, 59-78.
8. Pokorný, M. 1980. Sborník stanovisek, závěrů, rozborů a zhodnocení soudní praxe, zpráv o rozhodování soudů a soudních rozhodnutí Nejvyššího soudu. Praha: SEVT, 439.
9. Ramesh, N., Siddaiah, A, Joseph, B., 2020. Tackling corona virus disease 2019 (COVID 19) in workplaces. Indian journal of occupational and environmental medicine, 24(1), 16-18.
10. Sedliacikova, M., Strokova, Z., Hitka, M., Nagyova, N. 2020. Employees versus implementing controlling to the business practice. Entrepreneurship and sustainability issues, 7(3), 1527-1540.
11. Švec, M., Mura, L., Madleňák, A. 2017. Základy pracovného práva pre študentov verejnej správy, manažmentu a marketingu. 1. vyd. Bratislava: Paneurópska vysoká škola v Bratislave, Fakulta ekonómie a podnikania, 215.
12. Žuľová, J. 2016. Pracovnoprávna úprava doručovania a možnosti jej elektronizácie. In Súčasný stav a nové úlohy pracovného práva: Dies Iuris Tyrnavienses-Trnavské právnické dni: Nová Európa-výzva a očakávania. Praha: Nakladatelství Leges, 244-259.
13. World Health Organization: Getting your workplace ready for COVID-19. [online] [cit. 2020-03-25]. Available at: https://www.who.int/docs/default-source/coronaviruse/getting-workplace-ready-for-covid-19.pdf.

Authors contact:
JUDr. Jana Žuľová, PhD., Pavol Jozef Šafárik University in Košice, Faculty of Law, Department of Labour Law and Social Security Law, Kováčska 26, 040 75 Košice, Slovakia. e-mail: *jana.zulova@upjs.sk*
ORCID: *https://orcid.org/0000-0001-9635-4740*

Mgr. Ivan Kundrát, Pavol Jozef Šafárik University in Košice, Faculty of Law, Department of Labour Law and Social Security Law, Kováčska 26, 040 75 Košice, Slovakia. e-mail: *ivan.kundrat@student.upjs.sk*
ORCID: *https://orcid.org/0000-0003-4754-7604*

INSTRUCTIONS FOR AUTHORS

Submitting articles

The ***Central European Journal of Labour Law and Personnel Management*** is an open access scientific journal of the Labour Law Association, registered at Ministry of Culture of the Slovak Republic with registration number EV 5777/19, registered under ISSN 2644-4542 (online), ISSN 2644-4917 (print) and DOI 10.33382. The journal accepts original and authentic extended papers focusing on scientific articles of high quality in the field of labour law, social security law, human resources, HRM and related fields. The journal is published twice a year. Articles from domestic and authors abroad are accepted only in English language.

The deadline for manuscripts is 15th April and 15th November of the corresponding year.

Submissions are sent by email to *editor@llajournal.com*

General terms and conditions

The journal accepts original and authentic extended papers. Paper submitted to publisher is reviewed by two independent reviewers (system of double blind peer-review is used). Author of the submission is responsible for the formal and professional accuracy of the work and by submitting the paper/article confirms the respect of publication ethics. The originality of the paper is tested by plagiarism software. The Editorial Board of the journal will decide about publishing of the submission, considering the professional peer review, quality of the article and the scientific importance of it. The author is informed about review results via mail. If the paper is not accepted for publication, the Editorial Board of the scientific journal is entitled to archive the manuscript. If the article is accepted for publication, the author(s) will fill in and sign the license agreement with the publisher of the scientific journal.

Authors are not required to pay an article processing charge.

The Central European Journal of Labour Law and Personnel Management use Crossref and iThenticate software for plagiarism screening and verifies the paper originality. Potential authors can use this software to screen their manuscripts before submission.

Requirements for manuscript formatting

- By submitting the manuscript authors confirm originality of their work and agree with publishing the paper in printed and electronic form.
- Paper in full length including the author(s) name(s) in the DOC or DOCX format (MS Word text editor), Times New Roman 12, single line spacing (1) is required.
- The length of the article is determined in max. 15 pages, scientific reports max. 3 pages.
- Figures, schemas, etc. are placed in Word with title, note and source only for orientation purpose (not editable). All Figures, etc. need to be enclosed in separate

editable files. Figures in Word need to be identical to figures in separate editable files.

- **The title in English** is short, provides clear information about the content of work.
- **The name(s)** of the author(s) is listed who contributed to the submission. The academic degree of author(s) is not submitted. The workplace of author(s) is indicated in the next line.
- **The abstract** states the nature of the investigation and summarized the important conclusions. The abstract should not be longer than 10 lines and must be coherent and understandable without reference to the article. All the references to the author should be made in third person singular.
- Authors provide up to 5 **key words** with small letters.
- **JEL Classification** – a standard method of classifying scholarly literature in the field of economics – http://www.aeaweb.org/jel/guide/jel.php. (3 codes)
- **Introduction** – should provide overview of related research papers and work, proper references to bibliography, as well as providing information about recent research in the field of study. The introduction part should not include subchapters.
- **Theoretical background** – it should make a good impression and convince the reader why the theme is important and the approach relevant. It might refer to previous research or practical consideration, as well as review the relevant research/scientific literature.
- **Material and Methods** – this part should include subchapters describing the methods and steps applied. Enough detail about methods should be provided to revise the steps described. It is necessary to cite methods from adequate literature applied in the research.
- **Findings and Discussion** – the findings should be summarized in charts, enough facts should be provided to support conclusion. Do not present the same information in different forms (charts, graphs, text). Discussion part of the work should emphasize the new piece of information received through research compared to existing research results and findings in the studied field. This part of paper should present the main findings, testing of hypotheses and discussion of the research results.
- **Conclusion** – a synthesis of key points and, if applicable, the author recommends new areas for future research.
- **Acknowledgement** – all funding sources related to this work from all authors, a statement that indicates to the reader where the data supporting the conclusions can be obtained. The acknowledgments are also the appropriate place to thank colleagues and other contributors.
- **References** – all sources cited in text, tables, figures, and supporting information must appear in the reference list.
- Submitted papers should include links to relevant scientific literature in world scientific databases (Web of Science or Scopus, min. 5 sources).
- The author should respect STN ISO 690-692 when citing. Footnotes are not accepted.
- The bibliography should be arranged in alphabetical order, where surname of the author comes first without title, name of the author is written in capital letters.
- Internet sources should be cited as the following: surname and name of the author, title of the source, date of citation and URL (e.g. http://llajournal.com).
- Two or more works by the same author(s) published in the same year are indicated

by adding "a", "b", "c" for the year of publication. In case of more than three authors appendix "and col./et al" is included.

- The journal uses citation according to APA that uses for author's identification name and year of publication (e.g. Law, 2015; Law & Man, 2016). You may find details at *http://www.library.cornell.edu/resrch/citmanage/apa*
- **Author(s) contact** – include full name with academic title, affiliation (university, faculty, department), address (street, postcode, city), Country. Email: *name@web.com*; Authors´ ORCID (ORCID provides a central registry of researchers that crosses disciplines, work places, sectors, and national boundaries *https://orcid.org/register)* is recommended.
- **Language of the paper** – the contributions are submitted in English language (British English). The pages of manuscript are not numbered, modifications to journal template are not allowed, manuscript of the author will be sent back. Manuscript corrections are sent back on the address of the publisher within 5 days. Changes influencing the content of original manuscript are not allowed.

MANUSCRIPT REVIEW PROCESS AND REVIEW POLICY

The Central European Journal of Labour Law and Personnel Management welcomes manuscripts in the field and any subfield of Labour Law, Social Security Law, Human Resource Management, Human Resources, Motivation and Knowledge Management. The submitted manuscripts are subject to a peer review.

- This journal uses double-blind review, which means that both the reviewer and author are concealed from the reviewers, and vice versa, throughout the review process.
- Manuscripts submitted first go through an initial screening by the editorial team.
- The Editor-in-Chief resp. the Editorial Board first tests the manuscript for the several criteria of subject scope, apparent scientific validity, topical importance, relationship to prior publication, appropriate references, and length.
- We feel a strong obligation to support the scientific community in all aspects of research and publishing ethics. All new submissions to our journal are automatically screened by using the iThenticate plagiarism checker software; we are also registered members of CrossRef.
- After clearing the initial screening the manuscript is sent to one or more peer reviewers.
- The reviewers are professionals and chosen from the field and subfield of Labour Law, HR, HRM and Knowledge Management to fit the profile of the scientific journal.
- The submitted manuscript is sent to the reviewer(s) without the name and affiliation of the authors. The reviewers remain anonymous to the author(s) during the whole evaluation process.
- The Editorial Board ensures that the reviews are objective and fulfil high academic standard. The chosen peer reviewers have a good track record of producing high-quality reviews. When the objectivity or/and quality of the review does not meet the required standards, additional reviewers are appointed by the Editorial Board.
- Peer reviewers independently make a recommendation to the journal editor whether the manuscript should be accepted or rejected (with or without revisions).
- The journal editor considers all the feedback received from the reviewers and makes a decision to accept or reject the manuscript.
- The following are the most common decisions that are made:
  - accept without any changes
  - accept with minor revisions
  - accept after major revisions
  - reject the paper
- Reviews should be completed within 4-6 weeks.
- The Central European Journal of Labour Law and Personnel Management will not accept manuscripts to be reviewed if they are under consideration to be published in other scientific journals or manuscript with a content that have been substantially published elsewhere.
- Since peer review is a crucial process in publishing, the final decision on acceptance or rejection of the submitted manuscript is the responsibility of the journal's editorial team and the Editor-in-Chief.

PUBLISHING ETHICS, COPYRIGHT AND EDITORIAL PRIVACY, GUIDELINE FOR GDPR COMPLIANCE

Ethical Guideline for Authors, Editors and Reviewers

The publication of scientific papers is one of the core ways in which we serve the science community. Central to this service are certain responsibilities addressed to editorial board members, authors, editors and reviewers in order to maintain the high ethical standard relating to the publications of manuscripts in the journal published by us.

In cases where this guideline is breached – or appear to be so – we will follow and act accordingly the Code of Conduct and Best Practice Guidelines of the Committee on Publication Ethics (COPE) (more details: https://publicationethics.org/resources).

I. Authors

- By submitting the paper the authors confirm that it is their original work. If the authors have used the work and/or the words of others that this has been appropriately cited.
- The authors are not allowed to send their manuscript for consideration, when it is subject to assessment in another journal.
- Authors must ensure that data have been collected in an ethical manner.
- Any conflict of interest or the appearance of a conflict of interest must be disclosed.
- Do not make significant changes to your manuscript without informing the Editorial Board. Significant change include new content, new data, or change in the list of the authors.
- Individuals who did not make significant intellectual contribution should not be listed as authors. Contributors whose contribution is not significant enough for authorship (e.g. language consultation, data collection etc.) can be acknowledged in an Author's Note, mentioning the role they played in the publication.
- All those who have made significant contribution should be listed as co-authors. The corresponding author should ensure that all the co-authors have seen and approved the final version of the paper and agreed with the terms of publication.
- Authors are required to properly cite sources that have significantly influenced their research and their manuscript. Parts of the manuscript, including text, equations, pictures and tables that are taken from other works must be clearly marked, e.g. by quotation marks accompanied by their location in the original document (page number).
- Authors must report any errors they discover in their manuscript to the editor without delay. When authors discover a significant error or inaccuracy in their own published work, it is their obligation to promptly notify the Editor (or publisher) and cooperate with him/her to retract or correct the paper.
- The authors are aware that the publication remains archived, citable and accessible.
- In case of positive assessment of the Contribution, the author confirms with his/her signature that the contribution is his/her own work and has not violated the rights of the third party. By signature he/she confirms the publication of this Contribution and distribution of printed copies, distribution of electronic copies for all electronic media and formats (posting on the Journal's official web-site, any e-print services and electronic databases or repositories).

- By submitting a manuscript, the authors agree to abide by the Editorial Policies of the Central European Journal of Labour Law and Personnel Management.

II. Reviewer

- The reviewer should accept the manuscripts, which fall into his/her area of expertise. This is because in order to maintain high standards of the review process.
- Reviews should be accurate, substantive and objective. They should communicate their judgement of the submission based on its merits and contribution to the scientific literature.
- Reviews should contain documentable and specific information about the strengths and weaknesses of the submission.
- Reviewers are responsible for providing suggestions on how to make the manuscript more relevant, readable and complete.
- Information obtained through evaluation of the manuscript is confidential.
- It is the responsibility of the reviewer to provide a recommendation to the editor for the disposition of the manuscript, categorizing it into one of 4 groups.

1. Accept without modification
2. Accept with minor modification (manuscript requires modifications to improve its quality)
3. Major modifications required (manuscript requires extensive revision prior to potential acceptance)
4. Reject (manuscript is of low quality or low interest to the readership)

- Reviewers are obliged to treat the author with respect. They do not evaluate the manuscript if they have a conflict of interest resulting from cooperating or other relationship that they have with the author(s) of the assessed manuscript.
- Reviewers have to inform the editor, resp. the Editorial Board about any relevant information that might be a reason to reject publication of the manuscript.
- Reviewers must maintain the confidentiality of the review process – cannot disclose information from the reviewed paper. The manuscript must not be shown to or discussed with other experts as authorized by the editor.
- Reviewers have 14 days to complete the review. Failure to complete the review during this time period leads to a reminder email.

III. Editors

- The Editorial Board is responsible for providing guidelines to authors for preparing and submitting their manuscripts.
- The Editorial Board should treat all authors with fairness, objectivity, courtesy and transparency.
- It ensures objective evaluation of the manuscript on the basis of its academic qualities. The editors are responsible for maintaining the balance of high–quality materials to be published.
- The Board is responsible for making editorial decisions and communicating them in a clear and transparent manner.
- The authors of already published material have a right to conduct the editorial team and request clarification, correction, publishing apology or retraction. The editor should fully support the decision of the author, however may request additional explanation before publication and/or retraction.
- It is responsible to establish a system for effective and rapid peer review (double-blind review).

- Editors are responsible for explaining the details on the double-blind review procedures both to the author(s) and the reviewers. The reviewers get a reminder on rules and procedures accepted by the Editorial Board of the journal.
- Editors are responsible that the review process is properly encoded and neither the author nor the reviewer are able to detect the identities on the opposite side.
- In case of complaint filed by an author, reader or reviewer of the journal, the editors shall follow the appropriate CODE procedures.
- The Editorial Board must disclose any conflicts of interest. They are responsible for establishing and defining policies on conflicts of interests for all involved in the publication process including editors, staff, reviewers and authors.
- All situations presented as the conflict of interests shall be resolved according to COPE regulations. In such situations, editors and/or publishers are expected to find a relevant case among those described on the COPE site and take action accordingly.
- The Editorial Board is responsible for informing the authors that their submission will be evaluated according to the journal's standard procedures and should clearly communicate all other editorial policies and standards.
- Anyone may inform the Editorial Board at any time of suspected unethical behaviour or any type of misconduct by giving the necessary credible information/evidence to start an investigation.
- During an investigation, any evidence should be treated as confidential, and only made available to those strictly involved in the process.Minor misconduct (with no influence on the integrity of the paper and the journal, for example, when it comes to misunderstanding or wrong application of publishing standards) will be dealt directly with authors and reviewers without involving any other parties. Outcomes include: a) sending a warning letter to authors and/or reviewers, b) publishing correction of a paper, e.g. when sources properly quoted in the text are omitted from the reference list.
- In the case of major misconduct, the Editorial Board may adopt different measures: a) publication of a formal announcement or editorial describing the misconduct, b) informing officially the author's/reviewer's affiliating institution c) a ban on submissions from an individual for a defined period d) referring a case to a professional organization or legal authority for further investigation and action.
- When dealing with unethical behavior, the Editorial Board will rely on the guidelines and recommendations provided by the Committee on Publication Ethics (COPE).
- The Editorial Board has adopted that plagiarism, where someone assumes another's ideas, words as one's own, is a clear violation of scientific ethics. Plagiarism may also involve a violation of copyright law.
- All of the submitted manuscripts are being reviewed with the help of CrossRef – an official Digital Object Identifier(DOI) Registration Agency of the International DOI Foundation.
- The Editorial Board has a right to refuse the article that does not meet the requirements of publishing ethics.

Editorial Privacy Policy and GDPR Compliance

- The reviewers and the authors have the right to be informed about the collection and use of their personal data. This is a key transparency requirement under the GDPR.
- The Editor/ Editorial Board must provide the authors and reviewers with information including: purposes for processing personal data, retention periods for that personal data, and who it will be shared with. This is called 'privacy information'.
- The minimum term of data retention is 1calendar year since the day of the first contact.
- The personal data provided by the author/reviewer will be erased when the personal data is no longer needed or necessary for the purpose, which it was originally collected and processed for.
- The author/reviewers have the right to restrict the processing of their personal data in certain circumstances.
- The Editorial Board might share personal information and data of the authors in the cases of plagiarism or other misconduct detected. In this case, the Editorial Board is expected to fully cooperate in investigation.
- The author's work affiliation is integral part of articles' indexation in the international databases and catalogues. It is treated as an open-source data, the authors are recommended to provide it when submitting their manuscripts.
- The current work affiliation and the contact e-mail are treated as open-source data and are published on the first page of the article. If any of the authors would not like to see their e-mail address public should inform the editor before the article is publicly available online.
- The Editorial Board resp. the Editor shall not share personal contact information (phone number, e-mail address, skype ID etc.) with third parties.
- All the authors and reviewers are asked to respect the privacy of the journal's Editorial Board, and do not initiate communication via informal contact sources LinkedIn, Facebook etc.

Archiving

The Central European Journal of Labour Law and Personnel Management as a scientific journal is archived in a nationwide digital archive of the University Library in Bratislava (access to digital source: *https://www.webdepozit.sk/, https://portal.webdepozit.sk/webapp-portal/…*) All the articles published in the scientific journal are stored in the archive of the Editors with no public access.

Copyright and Open Access License

Budapest Open Access Initiative

The Central European Journal of Labour Law and Personnel Management respects and practices the principles of the Budapest Open Access Initiative and follows the principles of this initiative in practice. Abstracts and full texts of the articles published in our scientific journal are freely accessible, immediately after their publication in order to accelerate the dissemination of knowledge through publications with no financial barriers.

Name of the publication:
Central European Journal of Labour Law and Personnel Management

Managing Editor: Ladislav Mura

Authors:

Year: 2020
Volume 3. / No. 1
The Journal is published twice a year.
This number was published in June 2020.

Publisher: Labour Law Association (LLA) - Asociácia pracovného práva. Editorial Office of Central European Journal of Labour Law and Personnel Management J.G.Tajovského 13, 917 08 Trnava, Slovakia, European Union. IČO: 42 294 614 . http://www.laborlaw.sk/

Graphic preparation: GF KNIVES s.r.o.

ISSN 2644-4542 (online), ISSN 2644-4917 (print), EV 5777/19

DOI 10.33382

Price: 25,- €