

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/cejllpm.2019.03.04

TERMINATION OF EMPLOYMENT IN THE SLOVAK REPUBLIC AS A KEY ISSUE OF HR MANAGEMENT

Milena Nosková¹ - Tomáš Peráček¹

¹ Faculty of Management, Comenius University in Bratislava, Bratislava, Slovakia

Received: 09. November 2019, Reviewed: 18. December 2019, Accepted: 30. December 2019

Abstract

Termination of employment in the Slovak Republic represents a challenge to HR professionals due to its complex nature and strict requirements for legal compliance. The submitted paper focuses on analysis of various forms of termination of employment in the Slovak Republic in detail such as termination by agreement, termination by notice, immediate termination and termination in probation period as well as the multifaceted issue of collective redundancies. In addition, managerial aspects of termination are consulted and recommendations given. In terms of methodology, theoretical methods of research including logical abstraction, deduction as well as comparative method alongside with qualitative methods have been deployed. The main aim of the submitted contribution is to present a comprehensive guide for HR professionals as well as lay public in the very specific area that termination of employment in the specific conditions of the Slovak Republic truly is.

Key words

collective redundancies, HR management, termination of employment,

DOI: 10.33382/cejllpm.2019.03.04

JEL classification: J53, K15, M54

Introduction

HR management has undergone significant changes since its birth in 1900 and in the aftermath of accelerated globalization in the 1990s. According to Mathis, it may be defined as „designing formal systems in an organization to manage human talent for accomplishing organizational goals“ (Mathis et al., 2017, p. 69) Other authors argue that no general definition exists (Beardwell, 2007). HR managers are dealing not only with standard HR issues such as recruiting, staffing, training and development, appraisal systems and reward management, but also with such issues as termination of employment relationship either individually or collectively due to e.g. organizational or industrial changes. (Klerck, 2009). According to Olšovská: “the lack of regulation in this area through labour relation laws in Slovakia (the legislation in the labor code is too general) has led to an increasing number of cases negatively affecting employees’ legitimate interests as well as an increasing number of disputes claiming compensation for non-material damage“ (Olšovská et. al., 2016, p. 110). Price emphasizes the proactive nature of HR management as opposed to the more operational nature of personnel

management (Price, 2011). Boxall identifies three types of HR management, namely “micro HR management, strategic and international HR management” (Boxall et al., 2007, p. 2-3). Termination of employment may be viewed as a part of the micro HR management if individual cases are considered, but also as a part of strategic HR management provided that e.g. collective redundancies are on the table.

The situation in the Slovak Republic is no different than in any other country in the world. HR managers or HR departments have to be able not only to manage, but comply with legal regulation in this specific area of HR management as well as in employment relationships in general. Termination of employment relationship is very strictly regulated in the Slovak Republic. In addition, termination as such presents not only legal but ethical challenges to HR managers as well (Bogaert, 2005). Many times, issues connected with termination of employment relationships in the Slovak Republic are handled not only by in-house HR professionals, but by external legal consultants and attorneys-at-law. This is mostly due to the fact that non-compliance with legal regulation governing termination of employment relationship may frequently lead to invalid steps and claims on the side of the employee, which could substantially damage the employer. On the other hand, employees as the weaker party in employment relationship are strongly protected and their rights have to be respected at any costs.

Theoretical background

Employment relationship is a legal relationship between an employer and an employee that lasts only for a certain period of time regardless if it is agreed for an indefinite term (Barancová et. al, 2019). According to Strolka: “it is not unusual for employers to bring an employment relationship to an end after a certain period of time for business reasons or because the “chemistry” is not right“ (Strolka, 2019, pp. 223-238). However, protection of employees against arbitrary termination is a result of historical development of labour law in the Slovak Republic and is guaranteed by the provision of the Article 36 letter b) of the Constitution of the Slovak Republic.

There are several ways of termination of employment in the Slovak Republic. In the first place, it may be based on a legal act such as agreement, termination with a notice, immediate termination or termination in the probation period. Secondly, it may be based on a legal event, such as expiry of time period for which the employment was agreed or death of the employee. Eventually, it may be based on the decision of an authority or by law according to § 58 par. 7 of the Slovak Labour Code (unlawful temporary assignment of an employee). According to Olšovská et al.: „the legislative process resulted in enactment of more than 20 key amendments covering agency employment with a significant impact on human resource management in manufacturing enterprises and flexibility in labor relations.“ (Olšovská et al., 2016, p. 110). With respect to concrete alternatives of termination of employment, the following methods exist. Agreement on termination of employment is a bilateral legal act based on which the employment relationship is terminated upon mutual will of the employer and the employee. If the employer and the employee agree on termination, the employment is terminated on the agreed date. Termination of employment with a notice is, in contrast to the agreement, a unilateral legal act of the employer or the employee with the aim of termination of the employment relationship. In special occasions, it is possible to terminate the employment relationship by immediate termination. Employment relationship concluded for a definite time ends by lapse of this period. Within the duration of the probation period, the employment relationship may be terminated as well. It is important to note that the requirement of participation of representatives of employees is relevant by termination, by notice and

immediate termination of employment relationship. The Slovak Labour Code also aims at mitigation of consequences of collective redundancies, in particular by stating reasons for such action.

Severance pay as a concept of labour law represents a certain form of satisfaction given by the employer to the employee upon termination of the employment relationship. Its main aim is to mitigate economic risk of the employee resulting from the loss of job. In contrast to the severance pay, the retirement pay serves a different purpose. It represents a certain form of remuneration of the employee provided by the employer for his whole career when the employee retires.

The employer is obliged to issue a work certificate to the employee within fifteen days after his request, but no sooner than two months before termination of the employment relationship. Upon termination of the employment relationship, the employer is obliged to submit a confirmation of employment. In addition, delivery as such is analyzed in § 38 par. 1 to 5 of the Labour Code, according to which written documents of the employer related to the formation, change and termination of an employment relationship of the employee based on an employment contract must be delivered to the employee to his own hands. The same applies to formation, changes and termination of rights and liabilities arising out of the agreements on work executed outside of the employment relationship (Barancová et al. 2019, pp. 426-431).

Written documents are delivered to the employee either in the place of work or to his residence or wherever the employee may be present. If it is not possible regardless of reasons, the delivery takes place per post as a recommended letter that shall be sent to the last known address of the employee (as a recommended letter with an advice of delivery) and a note „to own hands“. The employer is obliged to deliver written documents of the employee related to formation, change or termination of rights and obligations of the employee arising out of the employment contract or out of an agreement on work conducted outside of an employment relationship to the place of work or per post as a recommended letter. The use of the advice of delivery is not required (Barancová et al. 2019, pp. 426-431).

The Labour Code regulates also the concept of fiction of delivery, according to which the obligation of the employer or the employee to deliver a written document is fulfilled as soon as it is returned by post to the sender as undeliverable or if the delivery of the written document was made impossible by act or omission of the addressee. Delivery is effective also if the employer or the employee refuses to receive the written document (Barancová et al. 2019, p. 426-431).

Material and methods

The main aim of the submitted contribution is to present a comprehensive guide for HR professionals as well as lay public in the very specific area that termination of employment in the specific conditions of the Slovak Republic truly is. The main sources used for the research include literature in the field of HR management and personnel management from such countries as the United States, Great Britain, Germany as well as the Slovak Republic. In addition, commentaries and academic literature, specifically applicable in the Slovak Republic in the field of employment relations have been used.

In terms of methodology, theoretical methods of research including logical abstraction, deduction as well as comparative method have been deployed in order to analyse the highly regulated area that termination of employment in conditions of the Slovak Republic represents. As opposed to other jurisdictions, Slovak regulation of termination of employment is much stricter. Non-compliance frequently results in invalid termination and claims of the employees against the employer. Similarly, practice of Slovak courts based on constant judicial decisions in the filed of termination of employment is strongly pro-employee oriented. Thus, HR managers have to have detailed knowledge of the core issues and strong legal background in addition to soft skills in order to effectively handle legal, managerial and ethical challenges connected to termination of employment. From qualitative methods, analysis of documents has been applied. The analyzed documents, both legal and managerial have been mentioned above.

Results and discussion

Agreement on Termination of Employment

The agreement on termination of employment must be concluded in writing, however non-compliance with the written form does not result in invalidity of the agreement as pursuant to academic literature also an oral agreement on termination of employment relationship is valid (Švec et. al, 2019). The reasons for termination must be stated in the agreement only if the employee requires so or in case the employment relationship was terminated by agreement from reasons stated in § 63 par. 1 . letter a) to c) of the Slovak Labour Code. These reasons are:

- the employer or a part thereof is cancelled or transferred and the employee does not agree with the change of the agreed place of work,
- the employee becomes redundant due to a written decision of the employer or a relevant body on change of his/her tasks, technical equipment or decrease in labour force, with the aim to ensure effectivity of labour or other organizational changes,
- the employee due to his/her health condition according to a medical review loses his capacity to carry out his/her actual work or he/she may not execute it due to work related illness or danger of such illness or if he has reached the highest possible exposure set by the decision of the relevant authority of public health (Švec et al., 2019)

Pursuant to the Labour Code, the Employer is obliged to submit one original of the agreement on termination of employment to the employee.

Termination of Employment by Notice

Termination of employment with a notice is, in contrast to the agreement, a unilateral legal act of the employer or the employee with the aim of termination of the employment relationship. It becomes effective upon its delivery to the addressee. The employment relationship may be terminated only as a whole, never partially. It is not possible to submit a termination by notice with retroactive effect (with effects to the past). Both the employer and the employee may terminate by notice. Termination must be made in writing and it must be delivered to the addressee (Barancová et. al, 2019, pp. 435 – 646).

The employer may terminate employment by notice only from reasons stated in the Labour Code. The reason for termination must be defined factually, so that it may not be confused with any other reason, otherwise the termination by notice is not considered to be valid. If the reason for termination was redundancy according to § 63 par. 1 letter b) of the Labour Code, the employer may not create the same job position or hire a new employee for the position for at least two months. Once delivered, the termination by notice may be recalled only with the

consent of the addressee whereas such consent must be made in writing (Švec et al., 2019, p. 624).

Notice period

Notice period constitutes an integral part of the concept of termination by notice in the Slovak Republic. If termination by notice is given, the employment relationship is terminated upon expiry of the notice period. The shortest notice period stated by the Labour Code is one month. Different notice period applies in case of an employee to whom the termination by notice was given from the reason of cancellation or transfer of the employer and he/she does not agree with the change of place of work or from the reason of redundancy or in case the employee has lost his/her capacity to execute his/her former work due to his/her health condition on the basis of a medical review in the long run. Under these circumstances, the notice period is at least:

- two months provided that the employment relationship of the employee by the employer lasted at least one year and no more than five years to the date of delivery of the termination notice,
- three months provided that the employment relationship of the employee by the employer lasted at least five years to the date of delivery of the termination notice (Švec et al., 2019, pp. 646-649)

Notice period of the employee to whom termination notice was given from other reasons than stated above is at least two months if the employment relationship of the employee by the employer lasted at least one year. It is also important to note that for the purpose of duration of the employment relationship, also the time period of repeatedly concluded employment relationship for a definite time with the same employer that immediately follow each other is counted. In case the employee terminates his/her employment relationship by notice and his/her employment relationship to the employer lasted at least one year to the date of delivery of the termination notice, the notice period is at least two months (Švec et al., 2019, pp. 646-649).

The notice period starts to pass from the first calendar day of the month following the month after the delivery of the termination notice and expires on the last day of the relevant calendar month provided that the Labour Code does not regulate it otherwise (Švec et al., 2019, pp. 646-649). Both the employer and the employee have the right to agree that if the employee does not stay by the employer during the notice period, the employer is entitled to a monetary compensation, in the maximum amount of the multiply of the average monthly salary of the employee and the duration of the notice period. However, this is applicable only in case that such monetary compensation has been agreed in the employment contract. Such agreement has to be in writing, otherwise it is considered invalid (Švec et al., 2019, pp. 646-649).

Termination notice given by the employer

The Labour Code in the Slovak Republic strictly defines reasons for termination notice given by the employer to the employee in § 63 and seq. Similar situation have been identified in foreign jurisdictions where the concept of so called „just cause“ has been introduced (Paul, 1993). The reasons in the Slovak Republic are as follows:

- the employer or a part thereof is cancelled or transferred and the employee does not agree with the change of the agreed place of work,
- the employee becomes redundant due to a written decision of the employer or a relevant body on change of his tasks, technical equipment or decrease in the number of employees with the aim of securing effectivity of labour or other organizational changes,
- employee due to his health condition according to a medical review has lost his capacity to execute his current work in the long-run or may not execute it due to a work related

illness or a danger of such illness or if he/she has reached the maximum possible exposure at the workplace determined by the decision of the relevant authority of the of public health,

- employee does not fulfill conditions required by legal regulations for execution of agreed work or has stopped fulfilling requirements stated according to § 42 par. 2 of the Labour Code (for example recall from the function of a statutory representative – in this regards, it is important to reflect on dismissal from broader perspective as it may significantly influence the performance of the organization (Simons, 2011), does not without guilt of the employer requirements for due execution of work in an internal regulation or does not fulfill his work tasks in a satisfactory manner and the employer has sent him a warning in writing within the last six months to remove such defects and the employee has not done so,
- there are other reasons on the side of the employee for which the employer could immediately terminate his/her employment relationship or for a less serious breach of work discipline; for less serious breach of work discipline, termination by notice may be given to the employee provided that he was notified in last six months in relation to the breach of work discipline on the possibility of termination by notice in writing (Švec et al., 2019, pp. 624-658).

The employer has the right to terminate the employment relationship of the employee by notice in case that is not given due to unsatisfactory fulfillment of work tasks or for less serious breach of work discipline or from reasons that substantiate immediate termination of the employment relationship only if:

- the employer does not have the possibility to employ the employee any further neither for shorter work time in place that was agreed as the place of work,
- the employee is not willing to be transferred to a different, to him adequate work, which was provided to him/her in the place that was agreed as the place of work or to be subject to previous preparation for such work (Švec et al., 2019, pp. 624-658).

The provision of § 64 par. 4 of the Labour Code limits the right of the employer to terminate the employment relationship of an employee with a notice in such way, that the termination by notice from reasons such as the breach of work discipline or from a reason for which immediate termination of the employment relationship may be given only within two months following the day when he found out the reason for termination and for breach of work discipline abroad also within two months following his return from abroad, however no later than within one calendar year from the day when the reason for termination arose. (Švec et al., 2019, pp. 624-658) If the employer wants to terminate the employment relationship from the reason of breach of work discipline, he has to notify the employee of the reason and enable him/her to get acquainted with it (Švec et al., 2019, pp. 624-658).

Prohibition of termination by notice (protection period)

Protection period is the time period during which prohibition of termination by notice from the side of the employer is in place if legal conditions are met. The employer may not terminate an employment relationship with an employee in the protection period which is:

1. period when the employee is considered as temporarily incapable to work due to illness or injury provided that incapacity has not been caused intentionally by the employee or caused under the influence of alcohol, narcotics or psychotropic substances and during the period of inpatient treatment or balneal treatment until their termination,
2. if summoned for extraordinary service in crisis situation by delivery of the summoning order or if he was summoned for the extraordinary service by a mobilization order or

mobilization notice or if the extraordinary service was ordered to the employee until two weeks after his release from the service, the same applies for alternative service according to special legal regulation,

3. period when the employee is pregnant, on maternity leave, on parental leave or when a single employee takes care of a child under three years of age, in period when the employee is freed for the execution of public function in the long run,
4. period when the employee working at night is acknowledged temporarily incapable to work at night, based on medical review (Barancová et al., 2019, pp. 687-694).

In case the termination by notice is given to the employee before the protection period in such a way that it should expire during the protection period, the employment relationship ends by lapse of the protection period unless the employee announces that he/she does not insist on prolongation of his employment relationship (Barancová et al., 2019, pp. 687-694). There are several exceptions from the prohibition of termination by notice from the side of the employer:

- when the employer or a part thereof is cancelled,
- when the employer or a part thereof is transferred and the employee does not agree with change of the place of work during time period when a single employee takes care of a child younger than three years and in time period when the employee working at night becomes, on the basis of a medical review acknowledged as temporarily incapable of night work,
- from reasons for which the employer may immediately terminate the employment relationship unless the employee is at maternity leave or parental leave. If the termination by notice is given to the employee before start of maternity leave or parental leave in such a way that the notice period would have lapsed during this maternity leave or parental leave, the notice period ends simultaneously with the end of the maternity leave or parental leave,
- for other breach of work discipline according to § 63 par. 1 letter e) of the Labour Code if the employee is not pregnant or at maternity leave or parental leave,
- the employee has by his own fault lost requirements for the execution of the agreed work according to a special law (Barancová et al., 2019, pp. 687-694).

Even stricter legal regulation applies for a handicapped employee to whom the employer may give a termination with notice only with a previous approval of the Authority of labour, social affairs and family, otherwise the termination by notice is not valid. This consent is not required if the termination by notice is given to the employee who has reached the age for pension rent or due to the fact that the employer or a part thereof is cancelled or transferred and the employee does not agree with change of agreed place of work or reasons exist for which immediate termination could follow or for less serious breach of work discipline provided that he was notified on the possibility of termination by notice in writing in relation to such breach of work discipline within last six months (Barancová et al., 2019, p. 694-695).

Termination by notice given by the employee

The employee may terminate his employment relationship by notice to the employer from any reason or without stating the reason whereas the written form of the notice has to be met and the termination by notice has to be delivered to the employer (Barancová et al., p. 695-696)

Immediate Termination of Employment Relationship

In special occasions, it is possible to terminate the employment relationship by immediate termination. In such case, no notice period is given. The employer may immediately terminate the employment relationship only exceptionally and only in case that the employee was

legitimately condemned for an intentional crime or has seriously breached the work discipline. Such legal act may be carried out only in the time period of two months following the day when the employer found out the reason for immediate termination, no longer than within one year since such reason has arisen (Švec et al., 2019, p. 670-675).

The employer may not immediately terminate employment relationship with a pregnant employee or with an employee at maternity leave or parental leave or with a single employee that takes care of a child younger than three years of age or an employee that takes care of a close person that has a serious disability. However, it is possible to terminate such employment relationship, with the exception of the employee at maternity leave or parental leave, by notice (Švec et al., 2019, p. 670-675).

The employee may terminate his/her employment relationship immediately only if:

1. according to medical review may not carry out his work without serious threat to his health and the employer has not transferred him to another work that would be adequate;
2. the employer did not pay his salary, salary compensation, travel expenses, compensation for work emergency, compensation of salary during temporary work incapacity of the employee or a part thereof within 15 days after their maturity;
3. His/her life or health is imminently endangered;
4. Youth employee has the right to terminate his employment relationship immediately also when he cannot execute work without endangering his morals (Švec et al., 2019, pp. 675-681)

The employee may terminate his employment relationship immediately only within one month following the day when he found out the reason for immediate termination whereas he has the claim to compensation of salary in the amount of his average monthly income for the notice period of two months (Švec et al., 2019, pp. 675-681).

Immediate termination must be executed in writing (regardless if it is given by the employer or the employee), the reason has to be factually defined in such a way that it may not be mistaken for another reason and such reason may not be changed afterwards. The immediate termination must be delivered to the addressee within the stated period under the sanction of invalidity (Švec et al., 2019, pp. 682-683).

Termination of the employment relationship agreed for a definite time

Employment relationship concluded for a definite time ends by lapse of this period. If the employee continues to execute his work after expiry of this period for the employer with employer being aware of this fact, such employment relationship changes into an employment relationship for indefinite time (if the employer does not conclude an agreement with the employee that the definite time is prolonged.) The § 59 of the Labour Code applies also for the termination of employment relationship for a definite time (Holub, 2017).

Termination of Employment Relationship in Probation Period

Within duration of the probation period, the employment relationship may be terminated by either the employer or the employee in writing from any reason or without stating a reason. The employer must respect the higher level of protection of certain persons and may terminate the employment relationship in the probation period with a pregnant woman, mother within 9 months after giving birth or a breastfeeding woman only in writing, in special cases that are not related to her pregnancy and maternity and must state reasons, otherwise it is invalid (Barancová et. al. 2019, pp. 725 – 729).

Written notification on termination of the employment relationship must be delivered to the addressee usually three days before the employment relationship should be terminated. However, the three-day time-frame is not binding, it serves as a recommendation.

Collective Redundancies

Collective redundancies may mean that the employer or a part thereof terminates employment relationship by notice due to the fact that the employer or a part thereof is cancelled or transferred and the employee does not agree with change of the agreed place of work or if the employee becomes redundant due to the written decision of the employer or a relevant body of the employer on change of his tasks, technical equipment or decrease in the number of employees with the aim to secure effectivity of labour or other organizational changes or if the employment relationship ends in other way which does not constitute in the person of the employee during 30 days:

- a) with at least ten employees by an employer which employs more than twenty and less than one hundred employees
- b) with at least 10 % of employees from the total number of employees by an employer who employs at least 100 and less than 300 employees,
- c) with at least 30 employees by the employer who employs at least 300 employees (Barancová et. al., 2019, p. 729).

With the aim to conclude an agreement, the employer is obliged at least one month before initiation of the collective redundancies to hear it with representatives of the employees. If no representatives of employees operate at the employer, it should be directly discussed with the relevant employees and enabling them to prevent collective redundancies or to limit it, in particular to discuss the possibility of their location in adequate employment on other work places, also after previous preparation and measures to mitigate unfavorable consequences of collective redundancies of employees (Barancová et. al., 2019, p. 730).

For this purpose, the employer is obliged to provide to the representatives of employees all necessary information and inform them in writing in particular on:

- a) Reasons for collective redundancies,
- b) Number and structure of employees with whom the employment relationship should be terminated,
- c) Total number and structure of employees whom they employ,
- d) Time period during which the collective redundancies take place,
- e) Criteria for selection of employees with whom the employment relationship should be terminated (Barancová et. al., 2019, p. 729)

The employer is also obliged to deliver a copy of the written information containing the data stated by law together with names, surnames and addresses of permanent residency of employees with whom the employment relationships should be terminated to the Authority of Labour, Social Matters and Family in order to look for solutions to the issues connected to collective redundancies. In this regard, GDPR requirements must be followed (Švec et al., 2018). In addition, the employer, after having discussed collective redundancies with the representatives of employees, is obliged to deliver the written information on the result of such discussion to the Authority of Labour, Social Matters and Family and representatives of employees who may submit comments regarding collective redundancies to the respective Authority of Labour, Social Matters and Family (Barancová et. al., 2019, p. 729 - 743).

Upon collective redundancies, the employer may terminate the employment relationship by notice from reasons stated in § 63 par. 1 letter a) and b) of the Labour Code or a proposal for termination of the employment relationship by an agreement from the same reasons. This may follow no sooner than after one month following the delivery of the written information as stated above. The purpose of this provision is to enable the Authority of Labour, Social Matters and Family to use this timeframe in order to search for solutions to the issues connected to planned collective redundancies. The Authority of Labour, Social Matters and Family may adequately shorten the period and must inform the employer immediately (Barancová et. al., 2019, p. 729 - 743).

If the employer violates his obligations connected to collective redundancies, the employee is entitled to compensation of salary in the amount of two times of his average salary. Provisions of § 73 par. 1 to 8 of the Labour Code dealing with the topic of collective redundancies do not cover termination of employment relationship concluded for a definite time and members of ship crew sailing under the state flag of the Slovak Republic. Similarly, the obligation to announce collective redundancies one month in advance does not apply to the employer on whom bankruptcy was declared by the court. If no representatives of employees operate by the employer, the employer fulfills his information duties directly towards the relevant employees (Barancová et. al., 2019, p. 729 - 743).

Participation of Employees Representatives upon Termination of Employment relationship

Termination by notice and immediate termination of employment relationship must be discussed in advance with the representatives of employees, otherwise they are invalid (Barancová et. al., 2019, p. 743). The representatives of employees are obliged to discuss termination by notice within seven working days following the written request by the employer and immediate termination within two working days following the written request by the employer. If during this time period no discussion takes place, a legal fiction applies that the discussion has taken place (Barancová et. al., 2019, p. 743).

Severance pay and retirement pay

The employee, with whom the employer terminated the employment relationship by notice due to the fact that the employer or a part thereof is cancelled or transferred and the employee does not agree with the change of the agreed place of work or the employee becomes redundant due to a written decision of the employer or a relevant body on change of his tasks, technical equipment or due to decrease in the number of employees with the aim of securing effectivity of labour or other organizational changes, the employee due to his health condition according to a medical review has lost his capacity to execute his current work in the long-run, is entitled to severance pay in the amount of at least:

- his average monthly income if the employment relationship lasted at least two years and no longer than five years,
- Double the average monthly income if the employment relationship of the employee lasted at least five years but no longer than ten years,
- Triple the average monthly income if the employment relationship lasted at least ten years and no longer than twenty years,
- Four times the average monthly salary if the employment relationship lasted at least twenty years (Barancová et. al., 2019, p. 751).

The employee, with whom the employer terminated the employment relationship by agreement due to the fact that the employer or a part thereof is cancelled or transferred and the employee does not agree with the change of the agreed place of work or the employee becomes redundant due to a written decision of the employer or a relevant body on change of his tasks, technical equipment or on decrease in the number of employees with the aim of securing effectivity of labour or other organizational changes, the employee due to his health condition according to a medical review has lost his capacity to execute his current work in the long-run is entitled to severance pay in the amount of at least:

- a) His average monthly income if the employment relationship lasted less than two years,
- b) Double the average monthly income if the employment relationship of the employee lasted at least two years but no longer than five years,
- c) Triple the average monthly income if the employment relationship lasted at least five years and less than ten years,
- d) Four times the average monthly salary if the employment relationship lasted at least ten years and less than twenty years,
- e) five times the average monthly salary if the employment relationship lasted at least twenty years (Barancová et. al., 2019, p. 751).

In addition, an employee with whom the employer terminates the employment relationship by notice or by agreement due to the fact that the employee may not execute his work due to work injury, work illness or a danger of such illness or he has reached the highest possible exposure determined by a decision of the relevant authority of public health, is entitled to severance pay in the amount of at least ten times his average monthly income. This is not applicable if the work related injury was caused as follows:

- a) the employee by his own fault violated legal regulations or other regulations for securing security and protection of health or instructions for securing security and protection of health by work regardless of the fact that he was duly and demonstrably acquainted with them and their knowledge and fulfillment were continuously required and controlled,
- b) work injury has been caused by the employee himself under the influence of alcohol, narcotics or psychotropic substances and the employers could not avoid it (Trel'ová, 2019, p. 85).

In order to avoid speculative actions of the employer and the employee, the Slovak Labour Code deals also with the issue of severance pay in case of repeated employment of the employee at the same employer. According to law, if the employee is employed by the same employer or his successor after termination of his employment relationship before lapse of time determined before the provided severance pay, is according to provision of § 76 par. 4 of the Labour Code obliged to return the severance pay or his proportionate part if he does not agree otherwise with the employer. The proportionate part of the severance pay is determined by the number of days from the repeated start of the employment relationship until the lapse of time resulting from the provided severance pay. The severance pay does not belong to the employee by whom as a result of organizational changes or rationalization measures takes place transfer of rights and obligations from employment relationships to another employer according to the relevant provision of the Labour Code (Černáková, 2017).

The issue of payment day of the severance pay is left to the agreement of the parties otherwise the severance pay is paid after termination of the employment relationship in the closest payment date for the payment of the salary. (Barancová et. al., 2019, p. 752).

The employee is entitled to retirement pay after his first termination of the employment relationship after his right to pension benefit or disabled pension benefit has arisen in the minimum sum of his average monthly income, however only in case that he asks for its provision before termination of his employment relationship or within ten days after its termination. The employee is entitled to retirement pay upon his termination of the employment relationship in the amount of at least his average monthly income also if premature pension benefit has been granted to him, on the basis of a request submitted before termination of his employment relationship or within ten days after its termination. The employer is not obliged to provide the retirement benefit to the employee if the employment relationship was terminated due to the fact that the employee was legitimately condemned for an intentional crime or has substantially breached his work discipline. The employee is entitled to the retirement pay only from one employer (Švec et al., 2019, p. 711 -712).

Work Certificate and Confirmation of Employment

According to provision of § 75 par. 1 of the Slovak Labour Code, the work certificate is defined as „all documents related to evaluation of the work of the employee, his qualification, abilities and other facts that are related to execution of work.“ The employee is entitled to look in his personal file that the employer compiles about the employee and to make extracts, duplicates and copies of the file. In this regard, it is also important to review which personal data are stored especially after the GDPR has come into effect. According to Švec: „... small and medium-sized enterprises have not managed to move on to new legislation. They continue to pursue employment relationships in accordance with the original privacy policy which may result in the imposition of a sanction by the control authorities and at the same time violating the right of employees to protect their privacy and personal data in the course of their work for the employer“ (Švec et al., 2018, p. 282).

Upon termination of the employment relationship, the employer is obliged to submit a confirmation of employment and state data required by law, in particular:

- a) time of duration of the employment relationship,
- b) type of executed work,
- c) if any payroll deductions are taking place and if so, in favour of whom, in what amount and what is the order of the claim for which the deductions are made,
- d) data on provided salary for the executed work, on provided compensation for salary and compensation for work emergency, on deducted advances and other facts crucial for yearly clearance of advances for tax from dependent work or functional benefit and for calculation of unemployment benefit,
- e) information on staying at the employer for a certain period of time after mastering the final exam or graduation exam or after termination of studies or preparation for work and information as to when this time period ends,
- f) information on provision of retirement pay according to provision of § 76a of the Labour Code (Švec et al., 2019, p. 702-706)

The law also reflects on the situation when the employee does not agree with the content of the work certificate or confirmation of employment. In this case, if the employer does not change or complete these documents, the employee has the right to address the court within three months following the day when he found out of the content in such a way that the employer would be obliged to change or complete the work certificate or confirmation of employment. This time period is preclusive in the sense that once the action is not filed with the court in the three-month period, the right of the employee to require changes in the work certificate becomes extinct. Other information than that provided about the employee in the work certificate or the

confirmation on employment may the employer provide only with the consent of the employee if not stipulated otherwise by law (Švec et al., 2019, p. 702-706).

Claims from invalid termination of the employment relationship

Invalidity of termination of an employment relationship by notice, immediate termination or termination in probation period or by agreement may be contested by the employer or the employee before a court no later than within two months after the employment relationship should have been terminated. In comparison to Germany, where „employees are entitled to reinstatement if the dismissal is not supported by sufficient reasons“ (Magotsch, 2018), in Slovakia the employment relationship may be assessed as lasting or untermiated under specific conditions. The time period for filing the action is considered preclusive which means that once expired, the right to contest the termination becomes extinct. It is also important to note that arbitration proceedings in employment relationships in Slovakia are out of question. However, certain authors analyze “the present legal landscape and opportunities to use legal qualifications to deal with individual labour law disputes.” (Olšovská et al, 2017, p. 112). Currently, only court proceedings before national courts are available in the Slovak Republic. Compared to other jurisdictions, where „access to the unfair dismissal jurisdictions of industrial tribunals is now so limited that most employees and employers are returned to the position before awards gave unfair dismissal protection, and laws were enacted to ameliorate the inadequacies of the common law“ (Pittard, 2008), the Slovak courts are generally strongly pro-employee oriented and many times try to protect the rights of the employee as the weaker party to the employment relationship.

If the employee invalidly terminated his employment relationship by notice, immediately or in probation period and the employer notified him that he insists that the employee should continue working for him, the employment relationship is not terminated. It is also important to note that if the employee refuses to work for the employer under the circumstances, the employer may request compensation of damages from the employee that arise from the day when the employer notified the employee that he insists on continuation of work. Even though no legal form is prescribed, in order to prove it before a court, delivery provisions of the Labour Code should be complied with (Švec et al., 2019, pp. 719-728)

A different situation arises in case the employee invalidly terminates the employment relationship and the employer does not insist on further execution of work by the employee. In this case, if the employer did not agree with the employee otherwise, it is considered that the employment relationship was terminated by agreement:

- a) in case of invalid termination by notice, by expiry of the notice period,
- b) if the employment relationship was invalidly terminated immediately when the employment relationship should have been terminated,
- c) if the employment relationship was invalidly terminated in probation period on the day when the employment relationship should have been terminated.

In these cases the employer is not entitled to request compensation for damages from the employee (Švec et al., 2019, p. 719-728). In practice, more frequently a situation arises that the employer has terminated the employment relationship of the employee invalidly (either by notice, immediately or in probation period) and the employee has notified the employer that he insists on further employment. In this case, the employment relationship does not end unless the court decides that it may not be requested rightfully from the employer to further employ the employee (Barancová et al. 2019, p. 773-785).

The employer is obliged to provide the employee with compensation of salary in the sum of his average income from the day when he notified the employer that he insists on further employment until the time when the employer enables him to continue to work or the court decides on termination of his employment relationship. Due to the length of court disputes in the Slovak Republic, the legislator has limited the total amount of compensation in such a way that if the total time for which the compensation of salary should be provided exceeds twelve months, the court may, upon request of the employer (based on his obligation to compensate for the salary for the time exceeding twelve months) adequately decrease it or not to grant it at all. The compensation for salary may not be granted for more than 36 months (Barancová et al. 2019, p. 773-785).

If the employer terminated the employment relationship invalidly and the employee does not insist on further employment and no other written agreement exists, the employment relationship is considered to be terminated by agreement

- a) if invalid termination by notice was given by expiry of notice period
- b) if the employment relationship was terminated invalidly immediately or in probation period, on the day when the employment relationship should have been terminated whereas the employee is entitled to compensation of damages in the amount of his average monthly income for the notice period of two months (Barancová et al. 2019, pp. 773-785).

If the agreement on termination is invalid, the claim of the employee for compensation of lost salary is assessed in the same way as in case of invalid termination by notice given to the employee by the employer. The employer does not have the right to claim compensation for damages due to invalidity of the agreement (Švec et al., 2019, p. 728).

Conclusion

Termination of employment relationship in the Slovak Republic is one of the key issues of HR management as it comprises of many different and complex issues. In words of Eger “when analysing labour law, most lawyers tend to focus on protection of existing employment relations and neglect the feedback on ex ante incentives, whereas most economists focus on the incentives to create new jobs without knowing the regulations and relevant court decisions in detail.” (Eger, 2003). In addition, ethical and managerial implications of termination have to be taken into consideration.

The results of the research show that in Slovakia, specifically, non-compliance with the relatively strict national regulation often results in undesired situation for the employer, who may face different claims from the side of the dismissed employee. Prevailing judicial decisions in such cases focus on protection of the dismissed employee over the interest of the employer. Thus, it is of utter importance that HR professionals are thoroughly acquainted not only with managerial challenges of termination of employment but with legal nuances of the procedure as well. External aid of legal professionals, especially in challenging cases or by collective redundancies is highly recommended. As a result, it would be recommended to thoroughly analyze judicial decisions regarding the termination of employment relations in terms of success rate of the employers versus employees. Similarly, it would be meaningful to analyze the historical perspective on labour law and flexibility in the Slovak Republic, especially in comparison to other legal systems both from legal and managerial point of view.

Acknowledgement

This article is an output of the science project VEGA 1/0813/19 “*Managing the development of innovative and start-up forms of businesses in international environment and verification of INMARK concept.*”

References

1. Barancová, H. et al. 2019. *Zákonník práce Komentár*. Bratislava : C.H.Beck, 1520
2. Beardwell, J., Claydon, T. 2007. *Human Resource Management – A Contemporary Approach*. Harlow: Pearson Education Limited,
3. Bogaert, D., Gross-Schaefer, A. (2005). *Terminating the employee-employer relationship: ethical and legal challenges*. Columbia: Columbia Southern University, 49-66.
4. Boxall, P., Purcell, J., Wright, P. 2007. *The Oxford Handbook of Human Resource Management*. Oxford: Oxford University Press,
5. Černáková, J. 2017. *Pracovnoprávne vzťahy pri prevode podniku*. Bratislava: Wolters Kluwer, 104
6. Eger, T. 2003. Opportunistic termination of employment contracts and legal protection against dismissal in Germany and the USA. *International Review of Law and Economics*, 23 (4), 381- 403
7. Holub, D. 2017. Dohoda o skončení pracovného pomeru z hľadiska podstatných náležitostí. *Studia commercialia Bratislavensia*, 10 (2), 146-156
8. Klerck, G. 2009. *Industrial relations and human resource management*. In D. G. Collings & G. Wood (Eds.), *Human resource management: A critical approach*. London: Routledge, 238-259
9. Magotsch, M., Kremp, P. 2018. *Termination of Employment. Key Aspect of German Employment and Labour Law*, Springer: Berlin, 161-170
10. Mathis, R. L. et al. 2017. *Human Resource Management*. Boston: Cengage Learning, 69
11. Olšovská, A., Mura, L., Švec, M. 2015. The most recent legislative changes and their impact on interest by enterprises in agency employment: What is next in human resource management? *Problems and Perspectives in Management*, 13 (3), 47-54
12. 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
13. Olšovská, A., Švec, M. 2017. The Admissibility of Arbitration Proceedings in Labour Law Disputes in Slovak Republic. *E-Journal of International and Comparative Labour Studies*, 6 (3), 112-123
14. 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
15. Pittard, M. 2008. Back to the Future: Unjust Termination of Employment Under the Work Choices Legislation. *Australian Journal of Labour Law*, 19 (1), 110-118
16. Price, A. 2011. *Human Resource Management*. Hampshire: Cengage Learning EMEA,
17. Simons, R. 2011. *Human Resource Management. Issues, Challenges and Opportunities*. Oakvill: Apple Academic Press,
18. Strolka, M. 2019. *Terminating Employment Relationships – Employment Termination Law*. Berlin: Springer, 223-238

19. Švec, M. Toman, J. et al. 2019. *Zákonník práce. Zákon o kolektívnom vyjednávaní. Komentár. Zväzok I.* Bratislava: Wolters Kluwer, 1479
20. Švec, M., Horecký, J., Madleňák, A. 2018. GDPR in Labour Relations – with or without the Consent of the Employee? *AD ALTA-Journal of interdisciplinary research*, (8) 2, 281-286
21. Treľová, S. 2019. *Základy pracovného práva pre manažérov.* Brno:Tribun EU, 85

Authors contact

Milena Nosková, Mgr., PhD., MBA, LL.M., Comenius University in Bratislava, Faculty of Management, Department of Information Systems, Odbojárov 10, 820 05 Bratislava, Slovakia.
Email: milena.noskova@fm.uniba.sk

ORCID: <https://orcid.org/0000-0001-7354-9000>

Tomáš Peráček, doc., JUDr. PhDr., PhD., Comenius University in Bratislava, Faculty of Management, Department of Information Systems, Odbojárov 10, 820 05 Bratislava, Slovakia.
Email: tomas.peracek@fm.uniba.sk

ORCID: <http://orcid.org/0000-0002-3498-5640>