PERSONNEL MANAGEMENT IN SLOVAKIA: AN EXPLANATION OF THE LATENT ISSUES

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Abstract: Recruitment and selection of new employees are key business activities if enterprises are to provide for long-term, sustainable and quality production. 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. Therefore, the employee selection procedure has become a complicated process with much uncertainty for an employer. The aim of this paper is to analyse and assess the process of recruitment, selection and dismissal in the context of hidden legislative limitations and to highlight practical issues linked to the management of these processes by enterprises.

Key words: employee, selection procedure, personnel management, Slovakia

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Introduction

The main task of personnel management is to focus on the multiple dimensions of working with people, which consists of the following personnel activities: conceptual management and Human Resource (HR) planning; seeking, recruitment and selection of employees; concluding of work contracts; keeping personnel files; employment issues of an individual and his/her work assignment; allocation of employees; training, education and development; career planning and management; and securing working conditions and occupational safety and health at the workplace (Šimo and Mura, 2015; Čapošová, 2015; Tabor, 2013). Personnel management also includes assessment of work performance, termination of employment contracts, collective bargaining, HR legislation, labour market surveys, and potential resources, demographic development (Li et al., 2015; Galambošová et al., 2014). The above-listed personnel activities are also performed, in addition to top managers, by line management, in particular by HR departments and their staffs depending on the size of the enterprise (Grabara, 2014; Buleca, 2013).

Recruitment, selection and concluding of employment contracts represent an important part of HR and are part of crucial administration and social processes of personnel management. Managing the process of recruitment of new employees so

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that it complies with legal requirements is not only key for the new employee's degree of satisfaction (as the employee has the opportunity to prove his/her knowledge, skills and practical experience) but also makes it possible for the employer to avoid sanctions that might be imposed upon the employer by supervisory authorities in case of non-compliance. This is the reason why, in the era where the number of complaints filed against employers by unsuccessful job candidates has been increasing, it is important for employers to handle the management and administrative part of the recruitment and selection process in a better way, particularly the legal side of it. Here, it must be mentioned that there is no Slovak law that would, in an exhaustive way, regulate the process, coordination and management part of the selection process. Thus, domestic employers, and foreign employers in particular, find themselves in many situations in which they are forced to proceed ad hoc and undertake the risk of applying an erroneous procedure. Even though private employers are required to comply with the Labour Code, as amended, the Code does not regulate the conditions and the process of selecting employees. The Code defines only certain informational duties for the employer and the potential employee that must be observed by both parties prior to the conclusion of an employment contract (Bulla, 2011).
The absence of relevant empirical research or professional literature in the field of personnel management, especially the issue of abusing of rights and encroaching on dignity of people applying for a job, have highly influenced the processing of the presented issue. Although, the medical assessment required by the employer, comes from relevant labour legislation, it says nothing about employee´s psychological assessment, especially when it has nothing to do with his future job and in practice it is questionable. Therefore, in this context, we have to take this issue as a new and seen only through the eyes of authors´ professional experiences. The described negative phenomenon is even more serious as it has a latent nature and its limitation is problematic considering the obstacles in gaining information from the employees worrying about the job and therefore often not publishing those cases.

Methodology

Given the complexity and scale of the above-described theme, this paper focuses on the analysis and evaluation of a distinct area of personnel management, particularly the organisational and legal issues related to recruitment, selection and dismissal procedures. The paper attempts to reveal certain latent or hidden issues and pitfalls as well as risks that personnel managers must take into account.
The main objective of the paper is to analyse and assess the process of recruitment, selection and dismissal in the context of hidden legislative limitations and to highlight practical issues linked to the management of these processes by enterprises through comparative analysis and case-based description of selected European Union countries and America. We have chosen Sweden, Switzerland, France and the Netherlands as the model member states because of the practical

comparison of national laws and real practices of companies from this geographical area.
This article focuses on clarifying less discussed site of the personnel management, its legal background. A secondary objective is to examine the effects caused by decisions taken by HR managers in the area of personnel management and general business management in individual enterprises.
In writing this paper, factual data from primary and secondary sources were used. Primary data were acquired as part of implementation of the scientific project VEGA No. 1/0423/14 "The Labour Code and its Possible Variations", funded by the Ministry of Education, Science, Research and Sport of the Slovak Republic. Secondary sources were scientific literature. An applied methodology was used in the context of the defined goals. The methods used in the paper were: critical in-depth analysis of the legal framework, description and logical cognitive methods. Qualitative research has been chosen due to the nature of the problem.

Results and Discussion

Formal Conditions Applying to Management of the Selection Procedure in the Slovak Republic and in other Countries

The European and non-European states legal regulations differ a lot. Sometimes it requires the connection of future job and medical examination; on the other hand, it is more benevolent and does not. Similarly, there´s not clearly set what could be allowed in medical assessment and what couldn't (maybe the USA are the exception). Such situation suits the employers and allows them to collect information about the employees that they would never have and wouldn´t need for the position. The gradual expansion of this phenomenon, especially in companies with foreign capital, is in our view a fundamental challenge for the future not only for the labour law, as well as personnel management. The choice of legal regulations of individual countries has followed the intention to choose suitable geographical representatives and the nature of foreign capital companies operating in Slovakia which the authors have met while the gaining experiences.
In order to identify legal regulation in the area of selection procedures, Article 2 of the Fundamental Principles of the Labour Code was taken as a base according to which "the employer has the right to free selection of employees in the necessary number and structure and the right to determine the conditions and method for the implementation of this right". The selection procedure takes place prior to the concluding of employment contract. However, according to Section 1, paragraph 5 of the Labour Code, "labour law relations are established upon the conclusion of the employment contract at the earliest, unless stipulated otherwise by this Act". The Labour Code does stipulate otherwise and assumes constituting of "pre-contract relations" (Section 41 of the Labour Code). Pursuant to this provision, also "relations arising prior to the concluding of the employment contract are considered to be labour law relations".

The obligations of the parties and other provisions regulating pre-contract labour law relations are encompassed also in the Act on Employment Services, as amended. According to Section 62, paragraph 3 of Act No. 5/2004, the employer shall not, when selecting an employee, demand information that is linked to the candidate's nationality, race or ethnicity, political beliefs, religion, sexual orientation, i.e. demanding this information would be contrary to fair employment practices, and it is not necessary personal information that an employer needs to obtain in order to fulfil the employer's obligations established in special provisions. On request by an individual citizen, the employer has the obligation to prove the need for such personal information.

According to Section 41 of the Labour Code, both the employer and the job-seeker have the duty to provide certain information. The Slovak legal regulation of pre-contract relations, particularly those concerning the issue of acquiring information and facts on job-seekers, is insufficient. This, and also the lack of relevant case law can lead to problems in practical terms (Barancová, 2014).

According to Section 75, paragraph 1 of the Labour Code, the employer is obliged to issue an employment evaluation of the employee within 15 days from his/her request. The employment evaluation consists of all documentation regarding the evaluation of an employee's work, his/her qualifications, aptitudes, and other matters related to performance of work. One of the current issues related to HR management in enterprises is a situation when an employee does not request an employment evaluation upon his/her employment termination but does so once a certain period of time has lapsed since his/her termination of employment. The former employer is no longer obliged to issue the employment evaluation. Hence, a future employer completely loses the opportunity to obtain the employment evaluation or references from a former employer concerning an individual participating in an employer's selection procedure. Although providing references is a common practice, it is not covered by law and therefore such practice may be considered problematic; quite often, without the consent of the subject (the employee), his/her personal data are made accessible and processed.

According to Section 41, paragraph 1 of the Labour Code, the employer is obliged to inform the job-seeker about the rights and duties that will be included in his/her employment contract and about the working conditions and wage conditions under which he/she will be performing the work. The employer may, according to Section 41, paragraph 5 of the Labour Code, demand from a job-seeker seeking his/her first employment only information related to the work that he/she is going to perform. An employer may demand, from a job-seeker who has been already employed, to present his/her employment evaluation and employment record. However, the employer must not request information concerning pregnancy, family relationships, personal integrity, political affiliation, trade union affiliation, or religion. According to Section 41, paragraph 6 of the Labour Code, information concerning one's personal integrity may be requested only if it is required by

special regulation or if personal integrity is essential due to the special nature of the work.

Based on an analysis of regulatory frameworks and practical experience from other EU member states, a general list may be outlined the type of information that an employer is entitled to demand from a job-seeker (Salvador and Mirgin, 2008). The list includes:

- The candidate's ability to perform the offered work, his/her job history and professional background, courses attended, certificates obtained;
- The candidate's ability to commute to work and arrive on time, the candidate's ability to observe the dress code;
- The candidate's logical-thinking capacity, the ability to manage stressful situations; for these purposes, it is possible to demand from the candidate to take tests on mathematics, logic, math word problems, computer skills, leadership and communication skills.

On the other hand, based on the experience of these authors with applied practice, it may be concluded that an employer must not under any circumstances demand information about the following:

- The candidate's previous pay, trade union membership, claims filed by the candidate with a court against a former employer;
- The candidate's psychological or physical condition, diagnoses and diseases, or health treatments undergone in the past; it is therefore unacceptable to demand information on health checks and examinations (e.g. blood tests, genetic tests, HIV/AIDS tests, drugs, etc.) unless such examinations are required by a special legal provision. An exception concerning information about one's health condition can be made when there are compulsory preventive examinations related directly to work;
- Alcohol consumption (frequency, types of alcohol) or consumption of narcotic and psychotropic substances (there is an exception concerning the consumption of these substances during working hours if the nature of work requires so, as stipulated by special provision);
- Criminal activities: the employer may demand information concerning personal integrity if it is stipulated by a special regulation or if the nature of the work so requires (the candidate then must present the extract or copy of his/her criminal records).

Similarly, a job-seeker is obliged to inform the potential employer about any facts preventing him/her from performing the work or facts that could be harmful to the employer.

If an employer requests an "unlawful" piece of information from a candidate and/or breaches the principle of equal treatment, the employer could be fined up to €100,000 imposed by the public authority supervising compliance with labour laws and regulations (the Labour Inspectorate). In addition, the individual who sought employment with the employer is entitled to claim financial damages in an amount that is not regulated by the Labour Code.

In **Sweden,** certain categories of employees whose work duties place specific demands on physical health (e.g., fire workers, police officers, etc.), must submit to medical examinations prior to and during an employment relationship. With respect to other categories of employees, the employer may ask for participation in a medical exam but the employee must always consent to examination.

In **Switzerland**, medical examinations or health-related tests are permissible as part of the hiring process only to the extent they are necessary to determine the applicant 's fitness for work. Any such examination could be conducted by a physician of the employer 's choice. If the applicant refuses to submit to such medical examination, the employer may elect not to hire him or her. The result of the medical examination will be subject to the professional secrecy (privilege) of the physician, whose report to the employer must be limited aspects that are relevant to the applicant ’s fitness to work.

According to **French** law, employees are subject to a preliminary medical examination before beginning to perform their employment contract or before the end of their trial period. This preliminary medical examination allows the employer: (1) to determine if the employee has a disease which is dangerous for other employees, (2) to know if the employee is physically apt to perform the job he or she is hired for. However, pursuant to Article L. 1132-1 of the French Labor Code, these tests are prohibited during the interview for the reasons set forth above.

Medical examinations, in **Netherlands,** may be requested by the potential employer at the end of the recruitment process, or by an employer if an employee is to be given a new position within the company. It also should be noted here that under Dutch law (Dutch Civil Code, art. 7:629), once the employee is employed, the employer is obliged to continue to pay wages to the employee during illness for a maximum period of two years.

The **Americans** with Disabilities Act (ADA) imposes restrictions on applicant medical examinations. A medical examination under the ADA is a procedure or test that “seeks information about an individual’s physical or mental impairments or health. The EEOC’s guidance on Preemployment Questions and Medical Examinations lists the following factors that should be considered to determine whether a test (or procedure) is a medical examination:

- whether the test is administrative by a heart care professional,
- whether the test is designed to reveal an impairment or physical or mental health,
- whether the test is invasive,
- whether the test measures an employee’s performance of a task or measures his or her physiological responses to performing the task,
- whether the test normally is given in a medical setting, and
- whether medical equipment is used.

Under the ADA, applicant medical examinations may only be required after a conditional offer of employment has been extended and prior to the commencement of employment, and only if:

- all entering employees are subject to such an examination regardless of disability,
- information obtained regarding the applicant ’s medical condition or history is collected and maintained or separate forms and in separate medical files and is treated as a confidential medical record, and
- any related applicant rejection or refusal to hire is shown to be job-related and consistent with business necessity.

If job - related and consistent with business necessity, the ADA provides that it may be a defense to a charge of discrimination if an emplyer demonstrates that performance “cannot be accomplished by reasonable accommodation”. Generally, a medical examination may be “job - related and consistent with business necessity“ when an employer “has a reasonable belief, based on objective evidence, that: (1) an individual ’s ability to perform essential job functions will be impaired by a medical condition, or (2) the individual will pose a direct threat due to a medical condition.”

Assessing an Employee’s Health Condition – a Key HR Management Issue

The employer may, according to Section 41, paragraph 2 of the Labour Code, demand information concerning an employee’s health or psychological capability and/or other condition necessary for determining the future employee’s ability to perform the work, but only if such capability for work performance is required by special regulation. Hence, if a certain type of work requires that an employee has a special competence, the employer may conclude an employment contract only with an individual fulfilling such special prerequisites. The intention of health evaluation of the employee as well as his/her psychological condition is that the employer has proof that the employee is competent to perform the agreed work and to ascertain that in performance of the agreed work the employee's life or health will not be threatened.

Evaluation of an employee’s health condition is important in relation to labour relations, although it is a very sensitive area and affects the employee's physical privacy. However, it is necessary to conclude that the employee, under certain circumstances, must tolerate the act of health evaluation if special legal provisions provide so for the purposes of work performance (in particular laws and regulations in the area of occupational safety and health) (Dolobáč, 2015).

Processes related to an employee's health evaluation are regulated by special Act No. 355/2007 Coll. on Support, Protection and Development of Public Health, as amended. Based on the above, it is clear what kinds of work performance require evaluation of an employee's health. However, when applied in practice it may be problematic to do so when the above-described law is not applicable to an employee to be assessed and this is similar to assessing the psychological condition of an employee. The employer must not assign work to an employee whose health condition is not suitable for the performance of work.

Currently, some employers request various psychological tests and/or medical examinations as part of their selection procedure. The question arises whether the employer may or may not request a potential employee to undergo psychological tests or medical examinations if it is not stipulated by special legal provisions. Assuming that any assignment of duties by the employer to employees must be in compliance with applicable law and also that the Labour Code provisions on employee duties may be considered mandatory with no possibility to circumvent them, it can be concluded that the employer is not entitled to so request these tests or examinations.

In this respect, it is necessary to differentiate if the intention of a psychological test is to find out more about the personality traits of the employee, i.e. his/her character features related to work performance, temperament, motivation and/or other characteristic features which are necessary and relevant for the performance of the work, or whether the intention is to explore the core of his or her personality which is possible only if this is required by special regulations (the issue of "core of personality" is not explored in this paper). With the lack of special regulation in this area, the principles of private law cannot be taken as the baseline in which "everything that is not forbidden is permitted" and permit psychological examinations without any limitations. To the contrary, it is essential to apply the principle that the assignment of duties to employees shall be done only on the grounds of law, within its boundaries and while observing fundamental rights and freedoms. In other words, the provisions of the Labour Code governing the duties of employees may be considered mandatory and therefore impossible to circumvent (Barinková and Žulová, 2015).

When dealing with the issue of the right of the employer to require a certain psychological capability of its employees and therefore asking them to undergo a psychological examination, one may argue that the Labour Code provides for employers to determine, in line with specific conditions of their activities, requirements necessary for due performance of their employees' work. However, an employer's possibility to determine requirements for work performance is not unlimited. The employer is to proceed in line with the principle of proportionality and define requirements that are justifiable and legitimate. Also, it shall apply that the employee is capable of due performance of work only upon fulfilment of the requirement.

Here, it should be emphasized that it is questionable whether the employer has the option to establish the requirement for psychological capability since such examination affects the personal privacy of an employee. However, for certain types of work it should be possible to request special capabilities, including requirements for psychological capabilities, provided that these special capabilities are necessary for and directly linked to the kind of work and activities performed as part of this specific type of work.

If, given a certain type of work, it is justifiable for the employer to set the requirement of psychological capability then it is also possible for this employer to

demand this psychological capability to be documented and establish the obligation for an employee to do so. This conclusion is based on the premise that the main reason for such assessment of an employee's psychological capability for a certain type of work is for the employer to have proof that the employee is truly capable of performing the agreed type of work.

In our opinion, the employer should make such assessment on a case-by-case basis when requiring an employee to undergo a psychological examination. Thus, an employer's instruction to all employees to undergo psychological examination across-the-board, regardless of the type of work or specific tasks to be performed can be considered improper and non-justifiable. In addition, according to case law of the Supreme Court of the Czech Republic (the arguments of Czech courts are quite often used in Slovakia), the requirement to undergo such examinations should be justifiable also based on the employer's finding that the employee has not been capable of due performance of work.

Regarding the assessment by an employer of an employee's capacities and his/her psychological capability, it is questionable whether an employer may establish a requirement for a certain psychological capability for work performance since such an assessment affects an employee's personal integrity. Therefore, it is necessary to individually examine each specific case/type of work to find out whether the psychological examination requirement is justifiable, proportional and fulfils a legitimate purpose. Thus, for certain types of work it would be possible to require special capabilities such as verbal, mathematical, or mechanical skills, performance efficiency, ability to concentrate, etc. as requirements for work performance provided this special capability is needed and relevant for the employee's specific type of work or activity. It follows from the above that a blanket requirement for psychological examination of employees regardless of the type of work and/or specific tasks performed would be disproportionate and unjustifiable.

In practical terms, such special requirements could be demanded from an employee who works in a bank and handles big amounts of money whose life could be under threat directly in association with his/her duties (for example, in case of an armed robbery of the bank) and it is therefore necessary that the employee is capable of managing such stressful and/or borderline situations. If the employee had undergone a psychological examination that resulted in the employer documenting that the employee does not fulfil the work performance requirements and/or the employee, under the above-mentioned circumstances, refuses to undergo psychological examination, a reason for dismissal could be established and the employer may terminate the employment contract.

Because of the lack of specific legal regulations covering issues related to the evaluation of the psychological capabilities of employees, we firmly recommend that employers obtain the consent of all employees with an evaluation of psychological capabilities and with the requirement to undergo psychological examination. If the employer has not obtained the consent of an employee to

undergo a psychological examination, the unilateral authorization to impose the duty to undergo psychological examination on employees is linked to serious risks. In general it may be stated that it is not possible to account for all the risks related to psychological examination of employees in a clear-cut way. If, upon the result of a check, the Labour Inspectorate concludes that a psychological examination has not been done in compliance with and within the limits of the law, the employer could be fined up to €100,000 (and/or the Labour Inspectorate could require the employer to remedy the situation). In addition, if the requirement of psychological capability was found to be unjustifiable and disproportionately affecting the employee's personal dignity, it could be assessed as discriminatory treatment by the employer and in such a case the employee could pursue a legal claim for remedy in court (if his/her personal dignity was seriously harmed, the employee could also claim financial compensation for non-material damage).

Conclusion

The hidden or latent issues of personnel management described above that are linked to the selection process in the Slovak Republic have prompted consideration of the need for legislative amendments that would provide for more detailed regulation of the process of recruitment and selection of employees. Against this reasoning stand the interests of large, mainly multinational, employers who wish to have their selection procedures defined according to their specific internal rules that often differ significantly from general laws and regulations and might even be contradictory. A typical example of this is assessment of the psychological capability of candidates for employment. Taking into account the increasing number of global companies and the universal nature of fundamental human rights and freedoms, we see the opportunity to open an international debate about the possibility to adopt a common European (multi-national) regulation.

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ZARZĄDZANIE PERSONELEM NA SŁOWACJI: OBJAŚNIENIE UKRYTYCH KWESTII

Streszczenie: Rekrutacja i selekcja nowych pracowników są kluczowym przedmiotem działalności, jeśli przedsiębiorstwa mają zapewnić długofalową, zrównoważoną produkcję wysokiej jakości. Brak regulacji w tym zakresie poprzez przepisy dotyczące relacji pracy w Słowacji (przepisy w kodeksie pracy są zbyt ogólne) doprowadził do wzrostu liczby przypadków negatywnie wpływających na uzasadnione interesy pracowników, a także coraz większej liczby sporów o odszkodowania za szkodę niematerialną. Dlatego procedura selekcji pracowników stała się skomplikowanym procesem z wielką niepewnością po stronie pracodawcy. Celem niniejszego opracowania jest analiza i ocena procesu rekrutacji, selekcji i zwolnienia w kontekście ukrytych ograniczeń legislacyjnych oraz wyróżnienie konkretnych zagadnień związanych z zarządzaniem tymi procesami w przedsiębiorstwach.
Słowa kluczowe: pracownik, procedura selekcji, zarządzanie personelem, Słowacja

對人事管理的斯洛伐克：問題的解釋潛

摘要：招聘和新員工的選擇是關鍵的商業活動，如果企業要想長期，可持續和高質量的生產提供您。通過在斯洛伐克勞動關係的法律在這方面缺乏監管（在勞動法立法過於籠統），導致越來越多的負面影響員工的合法權益，以及聲稱對非薪酬越來越多的糾紛案件_材料的損傷。因此，員工的選拔程序已經成為了雇主的不確定性的複雜過程。本文的目的在於分析和評估招聘，選拔和解僱的立法隱藏限制上下文的過程，並強調企業與這些流程的管理實際問題。
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