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Legal protection of mental health of employees in Slovakia

<http://dx.doi.org/10.12775.SIT.2022.006>

1. Introduction*

As a result of technological changes, a modern technological company naturally imposes new requirements relating to employment, new forms and ways of performing dependent work are emerging, and the employee no longer normally performs work only in a standard way on the employer's premises and under its direct and continuous supervision. Like society itself, work is moving to the virtual world in many areas, where communication between the employer and the employee is tied exclusively to technological means and the Internet. Speed is of the essence. The increasing speed of information transmission (subconsciously) forces employees to act faster. One hundred percent availability is required. Employment flexibility and the ability to reconcile work and family life often become a thing of the past. On the contrary, the employee should always be available, at least for a short e-mail response, information confirmation, etc. In essence, these are tasks that do not take an enormous amount of time, but the requirement

* The paper was prepared as part of the grant task APVV-16-0002 *Mental health at the workplace and assessment of the employee's medical fitness*.

of continuous readiness is ever-present. And this requirement is associated with stress.

In this context, the current system and procedures for the safety and protection of health at work should also be reviewed. New forms of employment present new challenges for protection at work, and protection must focus on both the physical and mental integrity of the employee. It is the modern technologies, e-mail communication or mobile phone technology which facilitate connection anytime and anywhere, thus forcing the employee to be constantly alert and ready to address work tasks. The result is stress, which can lead to mental fluctuations and employee failures.

The purpose of this paper is to approach the legal regulation of mental health protection of employees in Slovakia.

2. International legislation

It might appear from the introductory words that the legislation on the safety and health protection of employees does not reflect new forms of employment, but this is only partially true (we will comment on the criticism of the national legislation in the final summary). The protection of the employee's health as a whole, including the protection of the employee's mental health, is a priority area of labour law and the subject of amendments to several international conventions. The International Labour Organization (ILO) has adopted more than 40 standards specifically dealing with occupational safety and health, as well as over 40 Codes of Practice. Nearly half of ILO instruments deal directly or indirectly with occupational safety and health issues.¹

In addition, two significant ILO conventions can be mentioned right away. The International Labour Organization has adopted Convention No. 155 on the safety and health protection of workers

¹ International Labour Standards on Occupational Safety and Health (ilo.org). <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/occupational-safety-and-health/lang--en/index.htm> (access: 10.03.2022).

and the working environment (ratified in 15 EU Member States). Convention No. 155 provides for the adoption of a coherent national occupational safety and health policy, as well as action to be taken by governments and within enterprises to promote occupational safety and health and to improve working conditions. The Protocol of 2002 calls for the establishment and the periodic review of requirements and procedures for the recording and notification of occupational accidents and diseases, and for the publication of related annual statistics. Secondly, Convention No. 187 on a supportive framework for safety and health protection at work was ratified in 12 EU Member States. As an instrument setting out a promotional framework, this Convention is designed to provide for coherent and systematic treatment of occupational safety and health issues and to promote recognition of existing Conventions on occupational safety and health.²

These international documents do not reduce health protection to physical health, but also protect the mental health of employees. According to Convention No. 155 the term *health*, in relation to work, indicates not merely the absence of disease or infirmity; it also includes the physical and mental elements affecting health which are directly related to safety and hygiene at work (Art. 3 sec. e). The policy on occupational safety, occupational health and the working environment shall take account of the organization of work and work processes in accord with the physical and mental capacities of the workers.

The ILO introduced the idea of defining psychosocial factors of work as early as 1984.³ In a broader context, the World Health Organization has focused on mental health in its Declaration on Mental Health for Europe and in the Action Plan on Mental Health for Europe.

² International Labour Standards on Occupational Safety and Health (ilo.org).

³ Psychosocial Factors at Work: Recognition and control Report of the Joint ILO/WHO Committee on Occupational Health Ninth Session Geneva, 18–24 September 1984. See https://www.who.int/occupational_health/publications/ILO_WHO_1984_report_of_the_joint_committee.pdf (access: 10.03.2022).

It is not a compliment that the ILO has been pointing out the perception of psychosocial risks since the 1980s, but a lively debate in Slovakia is starting only now.

3. European legislation

In its primary law, specifically in Art. 156 of the Treaty on the Functioning of the European Union,⁴ the European Union guarantees the protection of health at work, the prevention of injuries at work and of occupational diseases as part of a wider social policy. In the decision-making activity of the Court of Justice of the European Union, as well as in the scientific and professional literature, the right to protection of physical and mental integrity is seen as part of a broader right to human dignity. The Charter of Fundamental Rights of the European Union, which became part of the Treaty on the Functioning of the European Union following the adoption of the Treaty of Lisbon, enshrines the right to protection of human dignity directly in Art. 1, according to which human dignity is inviolable.⁵ The right to human dignity is also protected by the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms.

The main EU legislation on the protection of workers' health is enshrined in Council Framework Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health protection of workers at work.⁶ Despite being of an older date, the content of this directive is still up-to-date, largely because of its abstractness and generally defined obligations, which remain unchanged in definition, but acquire new content as a result of new technologies. Particularly mentioned may be the employer's obligation to assess all potential risks to safety and

⁴ Consolidated version of the Treaty on the Functioning of the European Union, Official Journal of the European Union, C 326, 26.10.2012.

⁵ More in H. Barancová, *Rights of European Union Employees*, Prague 2016, p. 117 or also H. Barancová, *New technologies in labor relations*, Prague 2017, p. 65.

⁶ Official Journal of the European Union L 183, 29.6.1989, p. 1–8.

health at work which cannot be ruled out; eliminate risks at their source; adapt work to the individual, in particular in the design of workplaces, the choice of work equipment and the choice of working and production methods, in particular with a view to reducing monotonous work and repetitive tasks and reducing their impact on health; to adapt to technical progress. These obligations are also linked to the introduction of new technologies, and the protection of mental health cannot be separated from the protection of health in general.

New forms of organization of work have been reflected primarily in the current legislation. At the Employment, Social Policy, Health, and Consumer Affairs Council meeting in Luxembourg on 23 October 2017, the EU Ministers for Employment and Social Affairs unanimously adopted the European Pillar of Social Rights, which was subsequently announced by the Parliament, the Council, and the Commission at the Social Summit for fair jobs and growth. The European Social Pillar also focused directly on the protection of workers' health and a healthy, safe, and adapted working environment and data protection (Chapter II, point 10). Workers have the right to a high level of safety and protection of health at work and the right to a working environment which is adapted to their professional needs and which enables them to extend their participation in the labour market.

The European Union's interest in providing protection to new forms of employment, especially concerning those working in a collaborative economy, is also to be appreciated,⁷ as it is clear that without the legislative initiative, the performance of such work would break free from the social protection stemming from the labour law and the persons providing such labour, many times not as a gig, but as their main means of sustenance, would be left without any social protection. Such a trend has been set by the Court of Justice of the European Union,⁸ and the European

⁷ On "uberization of labor relations" see H. Barancová, *New technologies in labor relations*, p. 27.

⁸ For example, the judgment of the Court of Justice of the EU in Case C-434/15 *Asociación Profesional Elite Taxi v. Uber Systems Spain SL*, the

Union itself continues to carry it forward. In this context, however, a slight criticism is in place that the European Pillar of Social Rights is a legally non-binding act, as it deserves more formal legal authority.

Health protection is also the subject matter of other directives, in particular those providing social and legal protection to specific categories of workers, such as Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work,⁹ Council Directive 92/85/EEC on the protection of mothers, laying down minimum health protection requirements for pregnant female workers, mothers who have recently given birth and female workers who are breastfeeding,¹⁰ or Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working hours, laying down minimum requirements for safety and health protection for the organization of working hours (minimum periods of daily rest, weekly rest and annual leave, breaks at work and maximum weekly working hours and certain aspects of night work, shift work and work schedules).¹¹ However, these directives come with specific regulation and, from the point of view of safety and health protection at work, can only be considered as legal sources for protection of the mental health of employees in a broader context.

judgment of the Court of Justice of the EU in Case C-320/16 *Uber France* or also in Case C-371/17 *Uber BV v. Richard Leipold*.

⁹ Official Journal of the European Union L 216, 20.8.1994, p. 12–20.

¹⁰ Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Art. 16(1) of Directive 89/391/EEC) Official Journal of the European Union L 348, 28.11.1992, p. 1–7.

¹¹ Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time Official Journal of the European Union L 299, 18.11.2003, p. 9–19.

4. National legislation

We will look at national legislation from a different perspective from what we applied to international and union legislation. New technologies have not only brought completely new forms of employment (crowd working, or work in a shared economy), but have brought new content to existing forms of employment and the associated new risks related to safety and health protection at work. And it is precisely these facts that the national legislation and, in particular, the decision-making practice of public authorities or general courts, should respond to.

The advent of new technologies is associated with an emphasis on efficiency and work performance, but, at the same time, in almost every profession, including even purely practical professions, there is an increase in administrative burdens. The result is chronic load and stress. Instead of reconciling family and professional life, the exact opposite is happening. Employees perform work through information applications even outside standard working hours or while on vacation, holidays or non-working days, or at least respond promptly to work tasks and work correspondence.¹²

The most common mental disorders caused by the influence of the work environment include burn-out syndrome, FOMO syndrome (fear of missing out syndrome), procrastination syndrome, open space syndrome (sick building syndrome), digital dementia syndrome and tinnitus.

The question, therefore, arises as to whether we will find in national legislation sufficient tools to protect the physical and mental health of an employee who has been exposed to various stressors for a long time. The Labour Code contains the basic framework of the legal regulation of employee health protection. The elementary content of labour protection is enshrined in a separate law, No. 124/2006 Statutes on Safety and health protection at work. This Act lays down the general principles of prevention

¹² See also M. Dolobáč, M. Ridzoň, *Stres na pracovisku vyvolaný nepriemeranými požiadavkami na výkon práce*, "Societas et iurisprudentia [online]" 2021, No. 9(4), pp. 19–31 (access: 10.03.2022).

and basic conditions for ensuring safety and health protection at work and for the exclusion of risks and factors that may lead to the occurrence of injuries at work, occupational diseases, and other damage to health at work, and essentially covers all risks associated with work. This basic regulation is then supplemented in particular by Act No. 355/2007 Statutes on Protection, support, and development of public health and Act No. 125/2006 Statutes on Labour inspection. From among the regulations of lower legal force, there is the Decree of the Ministry of Health of the Slovak Republic 542/2007 Statutes on Details of health protection against physical exertion at work, mental workload, and sensory stress at work. The decree in question stipulates, among other things, the obligation for employers to take measures that eliminate or reduce to the lowest possible and achievable level the increased mental workload.

The brief legislation summary points to the relatively broad scope of the employer's legal obligations, which should provide a sufficient basis for protecting the health of the employee even in the event of new risks associated with the technological revolution, referred to as Industry 4.0.¹³

4.1. Mental illness as an occupational disease

However, we see a significant shortcoming in the fact that mental disorders cannot be considered an occupational disease that would entitle sick employees to receive social security payments. Annex No. 1 to Act No. 461/2003 Statutes on Social security, which sets out a catalogue of occupational diseases, does not classify any mental disorder as an occupational disease. At the same time, the ILO Recommendation on the List of Occupational Diseases and the Recording and Reporting of Injuries at Work and Occupation-

¹³ See also H. Barancová, *Labour Law in the Digital Age and the Development of a Collaborative Economy*, "Justičná revue" 2017, No. 69(10), pp. 1138–1154.

al Diseases recommends the inclusion of “post-traumatic stress disorder [...] and [...] other mental or behavioural disorders [...] if a direct link [...] has been identified between exposure to a risk factor resulting from work activities and a mental and behavioural disorder affecting the worker”.

Indeed we need to bear in mind that Annex No. 1 to the Act No. 461/2003 Statutes on Social security stipulates under point 47. the so-called “free item”, i.e. the law allows other occupational diseases including mental health diseases to be included in the list of occupational diseases. The condition for the acceptance of the disease in the list is the fact that the disease occurred during work and is in a causal connection with the identified health damage and this connection is assessed by the National Commission for Occupational Diseases. At the same time, however, we need to add that over the decades the National Commission for Occupational Diseases has never, not even in a single case, identified a mental illness as an occupational disease.

De lege ferenda, the legislator can be clearly recommended to make a change in this direction and the extension of the catalogue of occupational diseases to include mental disorders.

4.2. A right to disconnect

The COVID-19 pandemic brought about turbulent times to which labour law also responded. For example, under the transitional provisions, the Labour Code allowed, during an emergency situation or a state of emergency declared in connection with COVID-19, or within two months of their dismissal, to extend a fixed-term employment relationship for those employees for whom the legal requirements were not otherwise met. Telework and home office have also undergone modifications, namely the protection of the employee has increased with regard to the so-called right to be disconnected.

Lately, there has been a lot of discussion about a right to disconnect. Some authors point out that the right to disconnect should be implemented mainly through the collective agreements

that can ensure balance between work and family life.¹⁴ There are also opinions that consider the right to disconnect as too strict for the employers and concludes that the “right to a chosen connection” appears to be a more flexible terminology for the employees and the organizations, and could, therefore, be more appropriate in the current work environment.¹⁵ In general, there appear to be two paradigms for addressing problems associated with enhanced communication technology involving connectivity and immediacy. One approach, referred to as the “French Legislative Model,” attempts to regulate after hours’ electronic communication between employer and employee through statutes and lawmaking. This approach has, by far, gained the most publicity. The second method, which may be referred to as the “German Self-Regularity Model,” involves voluntary self-determination in which private firms adopt policies that fit their individual or industrial needs. This tactic comes from the belief that any government action is a legislative overstep.¹⁶

As we do not want to be only critical of our legislator, we will also dedicate a compliment to a recent change of a legislation linked to a right of disconnect.

For a long time we considered the legal regulation of telework in relation to the employee’s constitutional right to rest after work as insufficient and incorrect. The reason for criticism was in a fact that the provisions on the distribution of fixed weekly working hours, uninterrupted daily rest, uninterrupted weekly rest and breaks did not apply to the teleworking mode. We considered the exclusion of the legal regulation of continuous daily rest and continuous rest during the week to be critical. Employers interpreted the legislation in such a way that the employee is obliged to be

¹⁴ M. Avogaro, *Right to disconnect: French and Italian proposals for a global issue*, „Revista Direito das Relações Sociais e Trabalhistas” 2018, No. 4(3), p. 120.

¹⁵ L. Pansu, *Evaluation of ‘Right to Disconnect’ Legislation and Its Impact on Employee’s Productivity*, „International Journal of Management and Applied Research” 2018, No. 5, p. 108.

¹⁶ C.W. Bergen, M. Bressler, *Work, Non-Work Boundaries and the Right to Disconnect*, „Journal of Applied Business and Economics” 2019, No. 21(2), p. 61.

available at any time, *ad absurdum*, that the employee is obliged to work continuously. However, such unilateral conclusions were in conflict with the constitutionally guaranteed social protection of the employee, of which the right to adequate rest after work is also an immanent part (Art. 36(e) of the Constitution). After criticism, the legislator adopted the new legislation. Since 1.3.2021 according to § 52 sec. 10 of the Labour code, the employee performing domestic work or teleworking shall have the right to disconnect during his continuous daily rest, weekends and holidays (if he is not ordered or has not agreed to be on-call or overtime at that time). The employer may not consider it a breach of duty if the employee refuses to perform the work or comply with the instruction within the mentioned time.

Despite the fact that it is a progressive step towards a health and safety policy, on the other hand we just cannot resist adding, that the above-mentioned right to disconnect should apply, not just for domestic work and telework, but for any employment relationship. Employers often require extreme flexibility, even in standard employment. According to their ideas and needs, the employee is obliged to be always online, to perform tasks immediately, or even several tasks at the same time. And it is indeed such a way of performing work (multitasking) that is associated with increased mental effort and stress, which can lead to a mental disease of the employee.

4.3. Inspection of mental health protection

At the same time, the inspection of mental health protection is problematic. The information that is publicly available on the website of the National Labour Inspectorate shows that the Labour Inspectorate implemented several seminars as part of the EU-OSHA Healthy Workplaces 2014–2015 campaign aimed at managing stress and psychosocial risks at work, and the campaign was partially reflected in real inspections in practice. However, the campaign primarily provided assistance and advice to employees and employers so that they could identify stress in the workplace and combat it effectively. Preventive actions certainly have an irreplace-

able place in the activities of the relevant labour inspectorates, but the need for inspection and possible sanctions, i.e. the repressive component of the inspection activity, cannot be neglected either. And in this respect, labour inspection is inactive.

The European Business Survey on New and Emerging Risks (ESENER) found that more than 40% of employers consider psychosocial risk management to be more difficult than managing so-called traditional occupational safety and health risks. The main obstacles are the sensitivity of the issue and the lack of expertise. In addition, a survey of senior management found that almost half of them are convinced that none of their employees will ever have a mental health problem during their working lives. The fact is that as many as one in six employees will suffer from a mental health disorder. Employees with a mental health disorder are considered a risk to the organization, when in fact employees suffering from a mental health disorder unrelated to their work can usually work effectively in a workplace with a good psychosocial environment.¹⁷

In conclusion, it can only be reiterated that the legislator should place greater emphasis on the protection of the mental health of employees, in fact in two ways. Initial criticism is directed at the lack of legislation, when occupational diseases do not include mental disorders. The second area worthy of improvement is the inspection of the employer's observance of work procedures so that there is no damage to health.

SUMMARY

Legal protection of mental health of employees in Slovakia

The development of technology has a significant impact and creates new requirements in the field of labour-law relations. One of these requirements is the protection of occupational health and safety by preventing the blurring of boundaries between employees' work and their private

¹⁷ <https://www.ip.gov.sk/kampan-zdrave-pracoviska-2014-2015/> (access: 10.03.2022).

lives. In general, it can be stated that health protection legislation in Slovakia complies with standards, international obligations, and European legislation. On the other hand, we have to emphasize that the protection of mental health has only recently come into serious expert discussion, mostly because of the enormous mental health problems of employees caused by the pandemic. In the article we stressed the negative fact that mental disorders cannot be considered as an occupational disease and that means that employees with mental illness are excluded from the social security payments. There is an obvious necessity to include mental disorders and mental illness to the catalogue of occupational diseases as they are a legal basis for social (security) protection.

Besides that, the current subject of discussions in the professional community and also in the application practice is the right to disconnect. We consider an adoption of the right to disconnect to a telework regulation in the Labour code as a progress. Despite the fact that it is a progressive step towards a health and safety policy, on the other hand we just cannot resist adding that the above-mentioned right to disconnect should apply not just to domestic work and telework, but to any employment relationship.

Keywords: health and safety; mental health; occupational disease; industry 4.0

STRESZCZENIE

Ochrona prawna zdrowia psychicznego pracowników w Słowacji

Duże znaczenie na gruncie stosunków z zakresu prawa pracy ma rozwój technologii, który stawia tę dziedzinę przed nowymi wymaganiami. Jednym z nich jest ochrona zdrowia i bezpieczeństwa pracy oraz zapobieganie zacieraniu się granic między życiem zawodowym i prywatnym pracowników. Ustawodawstwo dotyczące ochrony zdrowia pracowników w Słowacji jest zgodne ze standardami i zobowiązaniami międzynarodowymi oraz z prawodawstwem europejskim. Należy jednak podkreślić, że ochrona zdrowia psychicznego pracowników dopiero od niedawna jest przedmiotem dyskusji wśród ekspertów, głównie z powodu dużych problemów psychicznych pracowników spowodowanych pandemią COVID-19. W artykule zwrócono uwagę na negatywne konsekwencje, jakie wiążą się z nieuznawaniem zaburzeń psychicznych pracowników za chorobę zawodową i wykluczeniem

chorych pracowników z opłacania składek na ubezpieczenie społeczne. Istnieje konieczność włączenia zaburzeń psychicznych i chorób psychicznych do katalogu chorób zawodowych w ramach prawnej ochrony socjalnej i bezpieczeństwa pracowników.

Aktualnym tematem dyskusji wśród przedstawicieli doktryny prawa pracy oraz w praktyce stosowania prawa jest również prawo do odłączenia się. Pozytywnie należy ocenić wprowadzenie prawa do odłączenia się od kodeksu pracy, a konkretnie od rozporządzenia w sprawie telepracy. Mimo że jest to krok naprzód w kierunku polityki bezpieczeństwa i higieny pracy, należy zauważyć, że prawne regulacje dotyczące prawa do odłączenia powinny mieć zastosowanie nie tylko do pracy w domu i telepracy, ale także do każdego stosunku pracy.

Słowa kluczowe: zdrowie i bezpieczeństwo; zdrowie psychiczne; choroba zawodowa; przemysł 4.0

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