| Chapter 6 |

Czech Republic: Critical Legal Analysis on Dogmatic and Current Issues of Labor Law

Martin ŠTEFKO

ABSTRACT

The purpose of this chapter is to analyze Czech labor law. The first part describes its position in the Czech legal order, the parts of which it is composed, and the 'big' legislative compromise derived by the Czech legislature, when the more flexible approach was taken after the millennium. The second part identifies two key legal issues that need to be addressed in relation to Czech labor law in the post-COVID period. The Czech political representatives have not yet been able to agree on basic conceptual measures to protect society, the country, or the economy. The indebtedness of the country and individuals is rising, as is mortality and the domestic violence rate. The Czech society is split, both ideologically and as far as the discourse between generations is concerned. Some people want to protect themselves, while others want to live even at the expense of those facing a threat.

KEYWORDS

COVID-19 testing, collective agreements, voluntary fire fighters, occupational injuries

1. Dogmatic Part

Czech labor law is a general term for a set of rules governing the performance of dependent work; it frames working conditions in an individual employment relationship, sets down rules for collective bargaining, governs the legal nature of collective agreements and sets forth rules governing the labor market.

1.1. Labor Law

Czech labor law is a legal branch on the border between public law and private law**.** Although labor law regulates the rights and duties of individuals who are formally equal, its main significance for private law is the protection of employees in negotiating with an employer. The protection from encroachments on employees' personal lives, from economic disadvantages and from health risks associated with the exercise of a particular job, is performed in name of public policy. Furthermore, certain parts of labor law shall demonstrate the authority of the State (e.g., regulation of

Štefko, M. (2022) 'Czech Republic: Critical Legal Analysis on Dogmatic and Current Issues of Labor Law' in Jakab, N. (ed.) *Fundamentals of Labor Law in Central Europe.* Miskolc–Budapest: Central European Academic Publishing. pp. 135–162. https://doi.org/10.54171/2022.nj.fullce_7

public holidays as memorials for the State[1]) or ensure the maintenance of the State (e.g., concept of day-off when an employee is delivered a draft notice, or she takes maternity leave).[2]

For research and study reasons, private law is divided into particular legal branches that are taught in law schools. Provided that labor law is classified as a part of private law, as most Czech authors do, it must be distinguished from other divisions of private law, such as civil law, commercial law, family law, and international private law.

According to Czech legal theory (and historical tradition), labor law is not distinguished from private law (in the sense of being a legal branch of private law). Private law is conceived as the body of laws regulating ordinary private matters, distinct from laws regulating business relationships, family relationships or relationships arising from the performance of dependent work. Labor law is comprised of provisions regulating the legal relationship between employer (old-fashioned 'master') and employee ('servant'). The nature of an employment relationship is that an employee 'sells labor'[3] to an employer.[4] The theory names the employee's work as 'the performance of dependent work.'

1.2. Work Relationship

Czech employees are represented on statutory and contractual bases. The latter applies to a national social dialogue that is performed by a special created body named the Council of Economic and Social Agreement (CESA). Since its creation, the CESA has been based on an unwritten tripartite agreement concluded between the government, the strongest trade union confederations, and employers' associations. The respective agreement of 1990 has never been replaced by a statute, court, or any arbitration award.[5]

All remaining representatives can be formed only on statutory bases and their status is governed by the Czech constitution and state statutes. Respective rules are

1 The tight connection between the State and labor law may be demonstrated by the fact that the only State Memorial Day (public holiday) during nearly the whole Communist era was the day when Czechoslovakia was 'liberated' by the Soviet Army (9th of May). The original State Memorial Day—the day when Czechoslovakia was established—was renamed and celebrated as the Day of Nationalization. See Act No. 93/1951 Collection.

2 Another example of the lack of a bright line rule between public and private law. Civil law is a part of private law; however, the Act on Responsibility for Injury Sustained because of Illegal Decision or Procedural Error, which is conceived as a part of civil law, governs the responsibility of public authorities acting in the framework of public law. See Constitutional Court decision on 30 April 2002, file number Pl. ÚS 18/01, published Sb.n.u.US. Vol. 26, No. 53, p. 73.

3 See Declaration Concerning the Aims and Purposes of the International Labor Organization in the ILO Constitution. According to art. 1 a) of the Declaration, *labor is not a commodity.* The Constitution was published in the Collection of Laws 1921, under No. 217.

4 For example, a builder builds an extension to a house, or a watchmaker repairs a watch.

5 Even if an agreement had been concluded, it would of course have been an unwritten agreement to which the signatories would not have been legally bound.

considered to be within the scope of public law and can be found in the Charter, Labor Code, Collective Bargaining Act, and Civil Code. Law recognizes four types of representatives: trade unions, works councils,[6] representatives concerned with occupational safety,[7] and European work councils.

An employer is required to create conditions for employee representatives to enable them to perform their duties, in particular to provide them, in accordance with operational means and to an appropriate extent, with reasonably equipped rooms, to cover the costs of maintenance and operation and to provide them with background documents and information.[8] Employees are entitled to time off work for union work; all representatives are entitled to undertake these activities during working hours and to be compensated for the loss of wages, if it occurs. But only trade union officials enjoy the highest protection against dismissals for trade union activities. Section 61 of the Labor Code states that a dismissal of a trade union official is to be regarded as automatically void and invalid, unless the employer has valid grounds for the dismissal and a court considers the further employment of the trade union official as unjust.[9] Other representatives of employees are under substantially weaker protection. This is true even for European Works Council members.[10]

At the end of a strong 1980s, the monopolist single-trade union organization had almost the same number of members as the whole United Kingdom union movement of 2006. The end of the totalitarian Communist regime caused an outflow of trade union members like other ex-Communist Central and Eastern European countries. Based on Eurostat data, the density of unionized workers was around 80% in 1993. However, Czech trade unions suffered a sharp decline after 1989 according to many experts.[11] In 2006, 21% of workers were unionized. Three years later, trade unions represented that the unionization rate is 17%. Since then, neither the respective Czech agencies nor trade unions published any data on this subject. Today, experts assess that only 10% of the whole workforce is unionized. The main reason for this sharp decline from 1993 in unionization can be identified as a loss of credit and power on the side of the official trade union organization. The Communist party and the official trade union organization were closely tied, and trade unions executed several state

6 Works councils can mediate in relationships between employers and employees and are called upon to enforce the right of employees to information and consultation. They have at least three and at most 15 members.

7 These rules enabled the Czech Republic to ratify the ILO Workers' Representatives Convention, 1971 (No. 135), in October 2000.

8 Despite this, there are cases where employers in certain companies try to exert influence on trade union bodies, including by means of offering certain benefits to trade union representatives.

9 This is a unique protection guaranteed by Czech Labor Code; no other employee enjoys the same level of legal protection against dismissals.

10 As derived by Supreme Court decision docket file No. 21 Cdo 398/2016.

11 It is thus possible that the Eurostat statistics of 1993 consider the total union organization not only in the original single trade union organization (which was called the 'Revolutionary Trade Union Movement') but also in the trade unions newly established after 1989.

functions and distributed several government benefits or sanctions to their members, whose membership was not entirely voluntary.

1.2.1. Trade Unions

Employees, including managerial personnel, are granted the right to join trade union organizations of their own choosing, without interference from either their industrial relationship opponents or from state authorities. Trade unions are also granted the right to establish their own constitutions and rules, to organize their internal administration, and to elect their representatives.[12]

Czech law does not recognize shop stewards; employees are represented by trade unions. From a legal perspective, Czech law recognizes one legal status of trade union organization regardless of its scope of operation. The strongest trade union federation with thousands of unionized members, and a trade union organization operating at a particular facility with three employees have the same legal status of private-law associations. In accordance with the law, three members can establish a trade union organization or employer organization. The legislation does not set forth other criteria for association, not even the criterion of just minimum density of union members.

The Civil Code spells out that a trade union is a society (in Czech *spolek*). But trade unions despise this classification due to its legal implications. The main reason given for their level of contempt for the new regulations of societies is a significant restriction of their room for maneuver, which they even consider to be violating respective ILO conventions. In fact, the Civil Code and supplementary legislation have brought many duties for societies. But the relevant Civil Code regulations shall apply only when appropriate regarding international obligations of the Czech Republic.

A trade union is an incorporated association, which means it is a separate entity from its members. The union rule book, like the articles of association of a company, provides for the institutions that govern the union. Trade unions are voluntary associations. A trade union organization can come into being as a creature of law by a formal procedure. The registrar shall not put under scrutiny an application for a trade union organization lodged at a regional court. and the trade union organization is established the subsequent day after the day its application was delivered.

In accordance with Czech law, trade unions are the only legitimate representative bodies of employees that have the right to collective bargaining. Trade unions represent all employees in labor relationships, including those who are not affiliated with any union.[13] The Labor Code of 2006 gives trade unions the right to participate

12 ILO Convention No. 87, supra note 7, art. 2. Convention 87—Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

13 The low number of affiliated trade union members is not reflected in the legislation for several reasons. First, in certain sectors, trade unions have managed to maintain a leading role due to traditional respect (typically mining), and second, top trade union officials have been able to maintain a close connection with national politics for decades.

in decision-making,[14] the right to co-determination, and the right to consult and gain information in matters relating to employees' interests. Furthermore, trade unions enjoy a significant right of control over the observance of labor law by the employer and the right to perform controls over occupational safety. Trade unions had been chosen by the legislature as the sole representative of employees short after 1945. During the Communist era, trade unions were incorporated into state mechanism and no other representatives were allowed to be created. Understood only in legal terms, trade unions were able to maintain their exclusive position as the sole representative of employees long after 1989. They have ever been able to stop any attempts to water down their prerogatives. Trade unions supremacy over other employee representatives represents the most important part of mixed legacy from previous totalitarian era up to date.

1.3. Labor Code

Czech labor law is codified. Most provisions of the Labor Code of 2006 set forth conditions of the employment relationship and only a few concern rules for employment contracts.[15] Hence, the second important concept in Czech labor law is that of employment relationships. The relationship is understood as a legal relation between two different individuals who are subject to rights and duties arising from that relationship. The noun adjunct 'employment' means that it is labor law which governs the relation in question. The dependent work is the object of employment relationship. The employment relationship and the contract of employment are two different things. The contract is a legal act that may establish an employment relationship; however, the employment relationship may come into being also second way—the employer may appoint an employee.

The Labor Code simplifies the process of concluding an employment contract. Parties do not need to agree on most terms because they are set forth directly in the law. Thus, both parties must establish only three conditions of work to form an employment relationship: the position (job title) the employee will hold and the tasks to be performed; the place of work; and the day on which the employee begins work. The place of work is confined to places where the employee will render service. The stipulation must be specific and understandable. If the place of work is defined as broader than one community (e.g., Prague), then either the parties must agree upon a regular place of work (for the purpose of determining what constitutes a business trip), or the employer is obligated to determine a regular place of work unilaterally. Therefore, an employer may not avoid his/her obligation to finance an employee's business trip.

14 The Labor Code envisions giving trade unions the right to prior consultations on proposals of labor legislation. See Section 320 of the Labor Code.

15 Czech lawmakers are responding to new forms of work. Agency employment has been regulated since 2004 and job sharing since 2021. Platform or digital employment has not yet received special regulation.

Furthermore, the Labor Code enables the employer to shift his/her employees' work tasks from those that were agreed upon. If it is not possible to agree upon the change, the employer may shift his/her employee to another job (with the same employer) that was not agreed upon in the employment contract nor in any other contract only in cases explicitly mentioned in Section 41 of the Labor Code. It is a unilateral legal action taken by the employer.

Once the employment has been constituted, its legal life is torn, to a certain extent, from the existence of contract of employment. For example, the fixed-term contract may elapse, but if an employee continues in the performance of work with the knowledge of the employer (the acceptance is not prescribed), the same employment relationship continues to exist.

The Czech Labor Code differentiates between cases where the employer *must* do it (e.g., because of the employee's health, in the event of pregnancy or caring for a newborn child, or the decision of a court or regulation authority) and cases where he merely *can* do so (e.g., dismissal due to a breach of work discipline or non-compliance with contractual requirements or needs, criminal prosecution for an intentionally committed illegal act that happened during the fulfillment of a labor task or an act that directly caused harm to the employer's property, the temporary loss of certain requirements for work that were agreed upon, or in the event of an extraordinary circumstance or accident). In such a case, the employer is obligated to discuss the reason for the shifting of tasks and how long it will last. If the employment contract is affected by the aforementioned changes, the employer must issue his/her employee a written confirmation regarding both the reason for the shift and how long it will last. The only exceptions to this rule are cases when an employee loses the requirements necessary for performing the work or in the case of an extraordinary event or an accident—in these cases informing the employee would be redundant.

If the employee cannot fulfill his work due to down-time or an interruption of the work caused by bad weather conditions, the employer can only second him/her to another place that was agreed upon in the employment contract if the employee consents.[16]

If the employer shifts his/her employee to other work than that listed in the employment contract, and the employee does not agree with this, he/she can only shift him/her after negotiating with a trade union. The negotiation is not necessary if the shift does not last more than 21 days per calendar year.

1.3.1. Employment Agreement

Both parties must contract only three conditions of work to establish to form an employment relationship (a so-called *essentialia negotii*): the position (job title) that

16 Consequently, this is a legal change to the previous regulation set forth in Act No. 65/1965 Collection (the Labor Code of 1965), where, according to Section 37 Subsection 4 Paragraph A of the Labor Code of 1965, consent was not necessary.

the employee will perform; the place of work; and the day on which the employee begins work.[17] The place of work is confined to places were the employee will render service. The stipulation must be specific und understandable.[18]

The Labor Code sets forth that an employer (but not employee) shall contract in writing.[19] The violation of form does not make the contract invalid.

According to Section 37 of Labor Code,[20] an employer must provide employees with a written statement of the terms and conditions of employment, either in the employment agreement, in the collective agreement, in internal regulations, or in additional documents. The terms and conditions include information about the rights and obligations ensuing from the concluded agreement, including working conditions, payments for the work to be performed, the length of annual leave, the notice period, and facts on collective agreements.

In addition to the essential conditions, the parties of an employment agreement may agree on other terms (e.g., probationary period, limited duration of employment relationship or restrictive covenant).

1.4. Changes toward Flexibility

The democratic revolution in 1989 and the subsequent fundamental changes in the political, social, and economic life of society exposed the insufficiency of the existing Labor Code of 1965. There have been more than 50 amendments, but the basic framework has remained the same since the Communist era. Therefore, the government decided to develop a new code that would be more appropriate for the changing conditions.

One of the basic principles that the new Labor Code of 2006 should have been founded upon, was the principle called freedom of contract. Because of this rule, both the employer and employee should have been permitted to form their mutual rights and duties of the employment relationship in accordance with their needs to a much larger extent than before. The principle of 'anything that is not expressly forbidden by the law is permitted,' was set forth in the Constitution and in Art. 2, Paras. 2 and 3 of the Charter.[21] However, the final and approved version of the respective sections of

17 If parties do not agree on these three requirements, the employment agreement will be not concluded and the employment relationship established.

18 If the place of work had been contracted as broader than one community (e.g., Prague), than the parties must agree upon a regular place of work for the purpose of business trips or the employer is obligated to determine a regular place of work unilaterally. Therefore, an employer may not avoid the duty to finance an employee's business trip.

19 The non-fulfillment of this duty is penalized as an offense.

20 The section contains the implementation if so-called Written particulars of employment. See Council Directive 91/533/EEC.

21 The Charter of Fundamental Rights and Freedoms was adopted as an appendix of statute No. 23/1991 Collection. After the extraordinary situation of 1992, when the Charter's predecessor was abolished, the Charter was re-established on 16 December 1992 as a component of the Czech constitutional order (Manifestation No. 2/1993 Coll.).

the Labor Code did not satisfy anybody.[22] It was too complicated and ambiguous. The reason was that the legislature tried to guarantee the same level of protection as in the Labor Code of 1965 and, at the same time, it wanted to widen the room to maneuver for both parties. Due to a complaint, the principle of the freedom of contract was examined by the Constitutional Court of the Czech Republic.[23] The Constitutional

22 The provisions concerning the freedom of contract were set forth in Sections 2 and 363 of the Labor Code of 2006. Parties were not to violate or abandon the Labor Code's regulation when the provisions were declared as overriding (mandatory) rules. The Labor Code of 2006 in its original edition set forth the following categories of rules as mandatory: provisions enumerated in Section 363, Paragraph 2; definitions of parties of labor law relationships (e.g., employer, employee or trade unions); provisions referring to the provisions of the Civil Code (the delegation principle); regulations regarding remedies; provisions in which the law is explicitly written; and provisions from which the law could be derived. These provisions could not be changed in whole or in part. Parties were to follow them in all their legal documents. Said provision has been amended several times from 1 January 2007. Section 2 was changed six times and Section 363 more than twenty times. The original legal approach was left for legal uncertainty. As it has been repeatedly found by experts or courts, the legislature omitted to regulate several institutes as mandatory and, on the contrary, established some institutes as mandatory to the detriment of the matter.

23 During the preparation of the Labor Code of 2006, the legislation was forced to deal with several theoretical problems. One of them was how to manage the relationship between civil law and labor law, or more particularly, the scope of the Civil Code and the scope of new Labor Code of 2006. Because the Civil Code contains many general rules which may be used in labor law, it seemed to be useless to rewrite and repeat such rules in the new Labor Code of 2006 as it did the Labor Code of 1965. Experts considered the two main approaches available—the concept of subsidiarity or the concept of limited application through express reference (delegation). The former means that the Civil Code would have applied as more general law in cases where the Labor Code of 2006 did not contain a specific regulation. On the contrary, the latter prescribes that it is the Labor Code which must enumerate which provisions of the Civil Code shall apply in labor law. The Civil Code must not be applied unless there is an express provision of the Labor Code which calls for the application of civil law. The legislature chose the delegation approach at the end. Therefore, the Labor Code of 2006 referred to almost 150 provisions of the Civil Code which, in accordance with Section 4 of the Labor Code of 2006, ought to apply to labor relationships. The same provision contained an interpretation rule that the Civil Code shall not be applied if the Labor Code of 2006 does not explicitly refer to a provision of the Civil Code. These referred provisions of the Civil Code are considered parts of the Labor Code of 2006 and, therefore, are governed by the general principles set forth in the Labor Code of 2006. However, such a legislative technique led to several problems regarding the application of Civil Code provisions in labor law. For example, the legislature made also reference to provisions which are inapplicable to labor relationships, and worse, to provisions which are contrary to ILO international treaties ratified by the Czech Republic and its predecessors (only some of these treaties enjoy direct applicability in Czech law). Additionally, it forgot to enumerate certain provisions of the Civil Code that are necessary for just application of the referred provisions. Large problems arose because of the invalidity of these legal acts. Both laws in question are based on different concepts concerning the invalidity of legal acts. Which of them shall apply in labor law? At the end, the Labor Code of 2006 was tearing out certain provisions of the Civil Code that the legislature envisioned to apply together. Therefore, due to legal uncertainty, the relevant provisions were finally annulled by the Constitutional Court in its judgment of 12 March 2008. The decision was published under No 116/2008 Collection.

Court profoundly simplified the principle with its intervention. Nevertheless, the Labor Code remains very protectionist toward employees.

If we perceive the flexibility of Labor Law as a lowering of the protection of employees from the termination of a labor relation,[24] it is necessary to mention that the Czech Labor Code has not adopted this principle yet. Czech labor law still prohibits an employer from dismissing his/her employees without a fair reason. The only exception is when a probation clause is contained within the employment contract.[25] Even a collective agreement cannot exempt an employee from protection against accidental or wrongful termination. Nor can a higher-level collective agreement provide for an exception. Thus, the only real blanket exception to the protection against termination of the employment relationship through an agreement is provided for in the Labor Code for agreements on work performed outside the employment relationship. These are two agreements that create a kind of second-class employment relationship, where employees have little protection.[26]

Nevertheless, significant changes are visible in fixed-term contracts and temporary agency work.

1.4.1. Permanent and Fixed-term Contracts of Employment

Unless the duration of the contract is explicitly stipulated, Section 39 of the Labor Code provides that the contract of employment is concluded for an unlimited period (a permanent job). Therefore, assuming an employer wishes to hire an employee only for a restricted period, he/she must stipulate it explicitly.

Because of the high level of protection regarding employees, particularly pregnant women and employees caring for small children, employers hesitate to hire such employees for tenure. Section 39 of the 2006 Labor Code adopted the old regulation that had implemented EC Law requirements on fixed-term work contained in Directive 1999/70/EC. An employer may hire an employee and continue the fixed-term employment relationship up to a maximum period of up to three years and can it repeat twice.[27] If an employer contracts with an employee in breach of the prescribed conditions, he/she, i.e., the employer, may be fined by the state oversight agency

24 See Mitrus, 2008, p. 518; Kristiansen, 2008, p. 509.

25 If a probation clause is included in the contract, either party is free to terminate the employment relationship within the probationary period. According to Section 35 of the Labor Code of 2006, the duration of the probationary period may be three months at most. The two parties may contract a shorter probation period, but the period of three months cannot be extended. The probation period can be agreed to only by means of the contract of employment and, at the latest, on the day when the employment relationship is established. The stipulation must be written to be valid.

26 Another traditional exception is the protection for so-called agreements on work performed outside the employment relationship, where the employee is not comparably protected before the termination of the employment relationship. Thus, if the employment relationship based on one of the outside employment agreements is terminated by a notice of dismissal, the court does not examine whether the grounds for termination are fulfilled.

27 Primary and secondary school teachers, civil servants, and military personnel have special fixed-term employment arrangements in respective statutes.

(called the Work Inspection). However, the agreement regarding a fixed-term contract will be valid until the employee, as the injured party, claims the invalidity in writing to the employer. The employee must do so before the fixed-term period elapses. If the employee claimed to be employed further (for an indefinite period) and the employer ignored his/her demand, the employee must appeal to the court within two months of the day when the employment relationship would have elapsed.

Where, after the expiration of the agreed period, the employee continues working without any objections on the part of the employer, such employment relationship is deemed to have changed to permanent employment relationship (tenure), unless the two parties' contract specifies otherwise. Fixed-term contracts can also be terminated by other reasons referred to in Section 52 of the Labor Code of 2006.

1.4.2. Temporary Agency Work

In 2004, the explicit regulation of the temporary employment relationship was introduced. Until that time, the Labor Code had enabled every employer, based on a contract concluded with their employee, to temporarily reassign his/her employee to a different employer. As of 1 October 2004, only an employer who has a permit to act as an employment agency can transfer employees to another employer for temporary work (however, as of 1 January 2011, an employer other than an employment agency may assign a temporary worker to another employer, but only if the conditions set out in Section 43a of the Labor Code are met). The temporary employment relationship is continuously gaining importance in the Czech Republic; nevertheless, official statistics have not been published yet.

The core of the temporary employment relationship remains unchanged. The employer (employment agency) temporarily allocates his/her employee to a different employer (user) based on an agreement in the employment contract or an agreement on working activity. Due to this, the employment agency commits itself to providing the employee a temporary exertion of work according to the employment contract or the agreement on working activity on the user's premises; and the employee commits him/herself to do this work according to the user's instructions and based on the contract of secondment that has been agreed upon by the labor agency and the user.

Protection of the temporary worker is assured by the duty to guarantee equal labor and wage conditions.[28] The employment agency and the user must ensure that the labor and wage conditions of the temporarily assigned worker are not worse than the conditions a comparable employee has or would have. If the labor or wage conditions of the temporarily assigned worker are worse during his/her exertion of work, the employment agency has the duty to guarantee equal treatment per the employee's request; or if it discovers this fact another way, to take the same steps even without a request. The temporarily assigned worker has the right to call for the fulfillment of his or her rights. The employment agency cannot assign the same temporary worker

28 The Czech Republic ratified the ILO Convention on Private Employment Agencies in 2000.

to work for the same employer for more than 12 subsequent calendar months. This restriction is not valid in cases where the employee of the employment agency asks the agency to do so, or in the case of substitute work for a user's worker who is on maternal or parental leave. (As far as parental leave is concerned, this applies both for the substitution of male and female workers). It is possible to limit the range of the temporary employment relationship in the collective agreement.

2. Current Labor Law Issues

This section demonstrates that the most important requirement in the prevention of infectious diseases is testing and vaccination. As the civil defense units are hardly visible and the active reserves are very small, volunteer firefighters have taken on a key role following professional firefighters, and these must help the undersized army and overburdened police for a long time. However, they are performing this task while being insufficiently protected against the consequences of an occupational accident.

2.1. COVID-19 Testing and Vaccination

It is the employer's duty to prevent a health detriment or damage to the property of employees and third parties. In this relation, the Czech Republic is primarily bound by the key ILO Convention no. 155 on the Safety and Health of Workers and a Safe Working Environment of 1981,[29] ILO Convention no. 161 on Occupational Health Services, 1985,[30] and Convention no. 187. As far as specific protection against certain risks is concerned, we should mention Conventions no. 115 of 1960, no. 139 of 1974, no. 148 of 1977, no. 162 of 1986 and no. 170 of 1990. The legal basis for the EU legislature's activities is laid down in art. 151 et seq. Treaty on the Functioning of the European Union (TFEU), in accordance with the European Social Charter and the 1989 Community Charter of the Fundamental Social Rights of Workers. Pursuant to art. 153 par. 1 Letter a) of the TFEU it is the EU's task to promote the Member States by cooperating on improving the working environment so that the employer's health is protected and doing so in relation to achieving the general objectives set out in art. 151 TFEU.[31]

29 See no. 20/1989 Coll. ILO Convention No. 155 which lays down in arts. 4 and 5 the basic principles and preventive principles in the field of occupational safety and health and in art. 8, it regulates the cooperation with employees' representatives (trade unions) to address occupational safety and health issues; in art. 9, it provides for the presumption of an independent state supervision over the area of occupational safety and health; and in art. 11, for the reporting and investigation of occupational accidents and occupational diseases.

30 See 145/1988 Sb. ILO Convention No. 161 which regulates the obligation to introduce company-internal health services at the national legal system level, which the Czech Republic subsequently did in the shape of the so-called occupational medical services. According to Act No. 373/2011 Coll., the occupational health services providers' task is—in accordance with ILO Convention No. 161—to provide for the prevention of health damage, including the protection of health against occupational diseases and other occupational injuries and the prevention of accidents at work.

31 See art. 156 TFEU.

Art. 31 of the EU Charter of Fundamental Rights regulates the right to decent and fair working conditions. According to paragraph 1 of this article, every worker has the right to working conditions minding his/her health, safety, and dignity. The most important piece of legislation in this area is Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work, as amended. The national regulation is laid down in Act no. 262/2006 Coll. Labor Code, as amended, Act no. 309/2006 Coll. as amended and the implementing labor law regulations on the issue of safety and health at work.

According to Act no. 262/2006 Coll. the Labor Code, as amended, every employer is obliged to set aside sufficient material and personnel resources to implement risk prevention measures at his facilities. These risk prevention measures thus form an integral and equal part of all employers' activities at all management levels. In other words, managers at all management levels are responsible for them within the scope of their tasks. Every employer is obliged to keep records of the search for and the evaluation of risks.

Act no. 258/2000 Coll., on the protection of public health and on the amendment of some related acts, as amended, regulates the procedure for detecting an infectious disease incidence, including obligations affecting natural and legal persons as well as natural persons running a business. The regulation concludes with a sanction mechanism, a definition of the merits of the offenses, including violations of the provisions governing vaccinations or non-compliance with special measures pursuant to Act no. 258/2000 Coll. The key provision is contained in art. 46 of Act no. 258/2000 Coll.

It should be noted that no legislation was prepared for the arrival of a pandemic. This applies both to the Labor Code and the so-called crisis laws. The Czech Labor Code lays down the basic regulation of working and wage conditions for employees and it is implemented by several special legal regulations. Act no. 240/2000 Coll., on Crisis Management and on the Amendments to Certain Acts, as amended (hereinafter only referred to as the 'Crisis Act') serves for these purposes and there is also the critical infrastructure, which was implemented into the Crisis Act in connection with Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European Critical Infrastructure and the assessment of the need to improve their protection.[32]

In art. 2, the Crisis Act defines the basic terminology.[33] Another critical infrastructure regulation is contained in the Government Regulation No. 432/2010 Coll., on the

32 The Celex no. of said directive is: 32008l0114.

33 In general, the critical infrastructure element 'means in particular a building, facility, facility or public infrastructure, determined according to interdisciplinary and sectoral criteria; if the critical infrastructure element is part of a European Critical Infrastructure, it shall be considered as a European Critical Infrastructure element.' To understand the context, it would be appropriate to add that the Crisis Act defines the critical infrastructure protection measures as 'measures to reduce the risk of a critical infrastructure element being disrupted' and that the critical infrastructure entity is 'critical infrastructure element operator; if it is the operator of a European Critical Infrastructure element, it shall be considered as a European Critical Infrastructure Entity'.

criteria for determining the critical infrastructure element, as amended. The Czech Republic government's resolution No. 140/2020 Coll. defines critical infrastructure entities employees as 'employees of critical infrastructure entities' according to art. 2 letter K) of the Crisis Act and these employees anticipate, within the scope of their work tasks, in providing for the critical infrastructure element functioning in the sense of Government Decree No. 432/2010 Coll., on the criteria for determining the critical infrastructure element, as amended by Government Decree No. 315/2014 Coll.[34]

In particular, the specific rules, set of duties and restrictions in relation to critical employees are defined by Government Resolution No. 377 with effect from 2 April 2020, as it:

> provides that critical infrastructure entities which are classified as employers in the sense of point III. Government Resolution No. 332 of 30 March 2020, on the adoption of a crisis measure, promulgated under No. 140/2020 Coll., may identify critical staff whose presence at the workplace is necessary to provide for the function of the relevant critical infrastructure element, to which the prohibitions and obligations set out in points I, II, and IV of Government Resolution No. 332 of 30 March 2020 will be applied.

With effect from October 5th 2020, a similar authorization is contained in the Government Decree UV 957:

> Critical Infrastructure Entities may designate critical staff whose presence at the workplace is required to provide for the functioning of the relevant critical infrastructure element to which prohibitions and obligations will apply.

In the case of the spread of the contagious COVID-19 disease, the public interest that the population be healthy is expressed by the existence of the merit of a crime of the spreading a contagious human disease according to art. 152 of the Criminal Code and by the existence of the merit of spreading a contagious human disease due to negligence according to art. 153 of the Criminal Code. Annex No. 1 to Government Order No. 453/2009 Coll. contains a closed enumeration of contagious human diseases. COVID-19 has also been added to this list.[35] If an employee breaches his/her duties disseminating thus COVID-19, he/she may, depending on the circumstances of the case,

34 Although Resolution no. 140/2020 Coll. was not formally repealed but supplemented by further Government Resolution No. 1185 in conjunction with Government Resolution No. 957, which defined critical infrastructure entities employees as employees whose presence at the workplace is required to provide for the relevant critical infrastructure element functioning and such persons are designated by the critical infrastructure entity in the sense of art. 2 letter K) Crisis Act.

35 The application on COVID-19 was sealed by Government Decree No. 75/2020 Coll. of 13 March 2020, amending Government Decree No. 453/2009 Coll. laying down, for the purposes of the Criminal Code, what are considered contagious human diseases, contagious animal diseases, contagious plant diseases and pests of commercial plants.

fulfill the merit of the negligent offense of spreading a contagious disease through negligence. If such an act is committed during another event seriously threatening the life or health of people, public order or property, the offender may be imprisoned for up to three years.

After almost one year, the Czech Parliament decided that the situation is severe and there is no hope to restore efficient healthcare without a COVID-19 testing. The respective statute was passed[36] and the government issued a few measures ordering a COVID-19 testing for all employees and majority of freelancers. Even so, the two-year period of the pandemic, it is possible to assess the effectiveness of Czech labor law as not being prepared for the arrival of the pandemic. The government has not decided to introduce an unambiguous regulation allowing employers to enforce non-compliance with anti-epidemiological measures directly at the workplace. The most egregious cases were eventually resolved through criminal prosecutions. Similarly, no consistent policy can be found on the obligation to vaccinate employees. Although the relevant regulation was eventually adopted—the newly elected government repealed it.[37] Thus, clear rules were eventually enforced only for the so-called key personnel, but there was no political will to enforce either disciplinary sanctions for non-compliance or mandatory vaccinations.

2.2. (Non-)obligatory testing

The employer is obliged to provide for a safe working environment. However, there's no labor law authorizing the employer to check upon the employee's health. This interpretation is backed by the wording of art. 106 of the Labor Code. Thus, there is no applicable private law provision that would permit an employer to impose an obligation toward an employee to be tested for COVID-19 regularly or even once. This is one of the fundamental principles stemming from the autonomy of the contractual will.

The obligation to present a negative test result to be admitted to the workplace, or rather to be permitted to work, can neither be enforced by the employer in the shape that he or she would define this obligation as a work-performance-related requirement. The reasons for this are the restrictions posed toward the employee as a contracting party, as well as prohibitions concerning reviewing the employee's health condition, discrimination due to health status reasons, and protection of the employee's personality. The employer may not decide him/herself whether it is required or appropriate to subject employees to COVID-19-testing, and at the same time s/he can neither assess their health condition in any other way, as he or she is

36 Act No. 94/2021 Collection on Emergency Measures Against COVID-19 (in Czech: *o mimořádných opatřeních při epidemii onemocnění COVID-19 a o změně některých souvisejících zákonů*).

37 On 10 December 2021, Decree no. 466/2021 Coll., amending Decree no. 537/2006 Coll., on vaccination against infectious diseases, as amended, was published in the Collection of Laws. The Decree entered into force on the day following its promulgation. The decree introduced mandatory vaccination against COVID-19 disease for persons over 60 years of age and selected professions from March 2022. The compulsory vaccination was abolished by Decree No. 22/2022 with effect before it could even begin.

simply not competent to do so. To be able to do so, employers need special legislation, or rather a binding decision made by the competent public authority.

Referencing to the obligation to provide for the safety and health of employees, the Ministry of Labor and Social Affairs of the Czech Republic published the interpretation that the employer is entitled to call upon his/her employees to undergo an examination at the occupational health service provider or at his/her general practitioner when returning from a COVID-19 affected area in particular, if it is justified in relation to the work performed or if the employer suspects that the employee is not qualified to perform the work.[38] In this interpretation context, we would like to point out that the Czech Ministry of Labor and Social Affairs has in no way been legally authorized to issue a binding opinion in the sense of art. 2, paragraph 3 of Act no. 1/1993 Coll. the Constitution of the Czech Republic, as amended, as well as art. 2(2) of the Charter of Fundamental Rights and Freedoms,[39] or rather art. 2 paragraph 1 of Act no. 500/2004 Coll. Administrative Procedure Code, as amended. This fact is important from the point of view of the legality principle, which also applies to so-called binding opinions, which condition further procedure in the relevant proceedings. These findings are also backed by correspondence practice in individual matters. When answering such individual questions, the Ministry of Labor and Social Affairs has repeatedly denied that it would be entitled to issue a binding interpretation of the given provisions from the Labor Code or the relevant implementing regulation.[40]

According to applicable regulations, the employer is not entitled to order employees to undergo a COVID-19 testing. The employer cannot straightforwardly request and enforce COVID-19 testing, nor can s/he derive legal consequences for the performance of work from such a fact. The fact that explicit legislation is missing and that protectionist jurisprudence has not yet given us solid hope that an employee's absence from work due to refusing to undergo a COVID-19 test could automatically

38 The given press release furthermore reads as follows: 'In this case, an extraordinary occupational medical examination at the occupational medical services provider is possible, i.e., in the sense of art. 12 of Decree No. 79/2013 Coll., On occupational medical services and on certain assessment care types.' Ministry of Health, 2020a.

39 The document was published as an appendix to Constitutional Act No. 23/1991 Coll. introducing the Charter of fundamental rights and freedoms as a constitutional law of the Federal Assembly of the Czech and Slovak Federal Republic and published under No. 2/1993 Coll. The Charter has been declared a constitutional law in Articles 3 and 112 of the Constitution.

40 The following notice is contained in these letters: 'Employees and employers are provided with basic information and counselling on labor relationships by the regional labor inspectorates (Act No. 251/2005 Coll., On Labor Inspection).' The competence, which is not included in the cited law, can neither be inferred even by judicial interpretation. As stated by the High Court in Prague in its decision from 24 June 1994 with docket file no. 6 A 59/93 (the decision was not published in any sort of official collection of court decisions): 'When interpreting and applying the law, the court must proceed based on what has been formulated by the legislature the Act, not on what he may have wanted to state but did not do so; when applying unclear, contradictory and interstitial provisions, the court is for sure obliged to use generally accepted rules of interpretation. However, it is not possible to interpret something that is not in the law, or to come to such a conclusion by interpretation'.

be considered an unexcused absence or an unpaid employee-related hindrance. This will always depend upon the circumstances of the case, as well as the reasons the employee refuses to undergo an employer-paid COVID-19 test. However, without adequate provisions, such a procedure cannot be explicitly recommended.

The Ministry of Labor and Social Affairs had been at least partially trying to remedy the lack by proposing that the employer send such an employee to an extraordinary preventive medical examination. However, at present, such a recommendation is completely unrealistic in several districts, as even the patients themselves cannot access their general practitioners without prior appointment, and the doctor's work frequently resembles telemedicine.

2.2.1. Temperature Measurement and Test Obligation

Apart from ordinary employees, there were different rules set up for the so-called critical infrastructure with indispensable employees demonstrated. After the initial surprise phase, the state decided to protect its personnel (the so-called indispensable critical employees) and critical infrastructure. Based on arts. 5 and 6 of the Crisis Act and under the resolution of the Government of the Czech Republic, a critical infrastructure entity was authorized[41] to identify so-called indispensable critical staff whose presence in the workplace is required to provide for the relevant element of critical infrastructure functioning and who are subject to increased reporting obligations regarding their health and the obligation to be re-tested for COVID-19 under certain circumstances. Making this resolution, the government amended the rights and obligations of critical infrastructure entities employees with effect from 30 March 2020.[42] The government has further ordered that the critical infrastructure entities

41 See Resolution no. 145/2020 Coll. of 1. April 2020. It is numbered 377 and its official title is 'On the adoption of a crisis measure (critical infrastructure entities) with effect from 2 April 2020. The Resolution of the Government of the Czech Republic No. 391/2020 Coll. of 30 September 2020, on the declaration of a state of emergency contains a similar authorization'.

42 The government prohibited that 'critical' employees, i.e., employees in critical infrastructure entities who do, while performing their tasks, contribute to providing for that the critical infrastructure element work, take leave during a state of emergency, except for quarantine-ordered persons. Furthermore, critical employees were also obliged to immediately inform the employer upon learning that they were in a so-called risky contact without adequate personal protective equipment, i.e., in direct contact with a person whose COVID-19 disease was confirmed. The government ordered that a critical employee showing no clinical symptoms who had a risky contact and whose work is indispensable, according to the employer's decision, to provide that the relevant element of critical infrastructure work which is operated by the relevant employer, to comply among other with these rules:
– take temperature measurements ahead of each shift immediately before starting work, and inform the superior about the temperature result and one's current state of health or any health problems,
– undergo a nasopharyngeal swab including a RT-PCR examination for COVID-19 five days after the risky contact, and at the same time a capillary blood rapid test to check for the presence of IgM and IgG antibodies, and
– if both aforementioned examinations are negative, continue working and undergo a second nasopharyngeal swab including a RT-PCR examination for COVID-19 fourteen days after the risky contact and at the same time a capillary blood rapid test to check for the presence of IgM and IgG antibodies.

operating a critical infrastructure element to fulfill several obligations in this regard, yet mandatorily testing all critical employees for COVID-19 is not yet included. This is also backed by the list of published recommendations by the Critical Infrastructure Association.[43] The Methodical Instruction issued by the Chief Hygienist of the Czech Republic on the single procedure for regional hygienic stations in deciding on ordering quarantine measures to persons who were in close contact with a person who had been diagnosed with COVID-19 via a laboratory examination, and whose employer has declared them to be persons who are indispensable, provide for operating the state's critical infrastructure, or ensure activities that are similarly indispensable, also does not call for general preventive testing.[44]

Furthermore, the government has also ordered that public health authorities and healthcare providers do not order a quarantine for critical employees not showing clinical symptoms who have come into risky contact and whose work is necessary according to the employer's decision to make the relevant critical infrastructure element operated by the employer work, if such an element is operated by the given employee. This shall be done if the employee and the employer concerned observe the aforementioned procedures and none of the tests performed is positive.

Based upon another resolution, the government has stipulated that critical infrastructure entities may designate critical staff whose presence at the workplace is required to provide for the functioning of the relevant critical infrastructure element to which prohibitions and obligations apply. Another provision was adopted via Government Resolution no. 1185.[45] However, this provision is less stringent, particularly as it only instructs designated critical staff to measure body temperature at the beginning of each shift immediately prior to commencing work.[46]

43 Chief Hygienist of the Czech Republic (2020): 'On the single procedure for regional hygienic stations in deciding on ordering quarantine measures to persons who were in close contact with a person who had been COVID-19 diagnosed via a laboratory examination and whose employer declared them to be persons indispensable,' decision of 29 September 2020, document fine no. MZDR 38651/2020-4/OES. Critical Infrastructure Association of the Czech Republic, 2020.

44 Ministry of Health, 2020b.

45 Published under No. 462/2020 Coll. Although Government Resolution No. 332 has not been formally repealed, there are reasonable doubts concerning its effectiveness. According to one of the interpretations, Government Resolution no. 332 (as well as Government Resolution no. 377) was to cease to have effect upon the state of emergency ending under which it had been declared, i.e., to end on 17 May 2020. However, the biggest problem is whether the Crisis Act allows that employees be ordered to be COVID-19-tested. Some of the doctrinal views support this by referring to the opinion that the Crisis Act provides for entirely replacing another (any) legal regulation, as it is a special regulation for crisis situations such as a state of war or emergency. Unfortunately, it is also true that the Crisis Act itself does not explicitly mind the existence of a pandemic. Given the absence of any other legal regulation, we tend to interpret Government Resolution No. 1185 not only in connection with Government Resolution No. 957, but also with Government Resolution Nos. 332 and 377.

46 Government Resolution No. 1185 instructs, inter alia, all critical employees, if they find that they have come into direct contact with a COVID-19 diagnosed person, while not wearing adequate personal protective equipment (which is understood as a risky contact), to immediately inform their employer thereof. The employer is then obliged to decide whether the critical

A critical employee violating the obligation to undergo a COVID-19 test represents a misdemeanor according to the Crisis Act. The crisis management body may impose a fine of up to CZK 20,000 on a critical employee when he/she commits such an act. Depending upon the circumstances of the relevant case, a critical employee may also have committed a criminal offense, i.e., spreading a contagious human disease, or spreading a contagious human disease due to negligence.

Yet neither the Crisis Act nor the implementing regulations provide that a critical employee is to or may be penalized by the employer for breaching the obligations imposed on a critical employee. This is due to the somewhat controversial legal basis for imposing the testing obligations on COVID-19. It is thus relatively risky to punish employees for these acts according to labor law regulations. If the given case refers to a critical employee violating his/her obligations under the Crisis Act and a crisis measure, then the employer is obliged to report the critical employee violating his/her obligations to the crisis management body and to wait for instructions from the crisis management body. If the critical infrastructure entity has a reason to believe that the employee is COVID-19 infected and is spreading this contagious disease intentionally or negligently, it is entitled to call upon the police of the Czech Republic to help and to prevent the spread of contagious human disease.

2.3. Volunteer Firefighters

There are 6,698 firefighting units (in CZ: JPO, an abbreviation of *Jednotka požární ochrany*) registered within the Czech Republic, 237 of which pertain to category JPO

> employee performing his/her work is necessary to provide for the function of the relevant critical infrastructure element operated by the employer in question. If it is not indispensable that the critical employee performs his/her work so that the relevant of critical infrastructure element operated by the employer concerned works, then the employer concerned must inform the locally competent public health authority which then orders the critical employee to quarantine. If the critical employee can work despite a potential COVID-19 infection, and if the critical employee's work performance is necessary to provide for the relevant critical infrastructure element functioning, then the relevant employer shall inform the locally competent public health authority and this indispensable critical employee shall, at minimum:
> – measure bodily temperature ahead of each shift immediately before starting work and inform the superior about the temperature measurement result and their current state of health or any health problems,
> – undergo a nasopharyngeal swab including a RT-PCR examination for COVID-19 five days after the risky contact, and at the same time a capillary blood rapid test to check for the presence of IgM and IgG antibodies, and
> – if both aforementioned examinations are negative, continue working and undergo a second nasopharyngeal swab including a RT-PCR examination regarding SARS-CoV-2 fourteen days after the risky contact and at the same time a capillary blood rapid test to check for the presence of IgM and IgG antibodies.
> Only if the result of both tests is negative, the critical employee shall continue performing work in the usual work mode. If the critical worker is diagnosed with any known clinical COVID-19 symptoms or if any of the test results is positive within 14 days from the risky contact, then the employer concerned shall inform the local public health authority, which will then order quarantine or isolation for that critical worker.

II, 1,356 to JPO III and 5,105 to JPO V.[47] In all, there are more than 67,149 volunteer firefighters (as of 2019). There were also further 3,013 firefighters in an employment relationship serving in company-internal firefighting units in the Czech Republic.

Given the nature of their activities, firefighters are in a dangerous environment, facing an increased risk of injury or death. When being deployed, firefighters are constantly exposed to adverse environmental impacts including various life-threatening dangers. The most serious cases include exposures to hazardous substances, high or low temperatures, combustion products, road work hazards, risks from working at high altitudes, electric shock hazards, infectious diseases, and many other hazards when rescuing people. When intervening in an extraordinary emergency, standard procedures commonly applied under usual conditions are frequently not abided by. This quite often refers to other than the use of technical means as listed in the instruction manuals, exceeding recommended limits, limited options of safety protection, etc.[48]

While professional firefighters are security forces members and are employed as well as properly secured for the case of an accident at work or an occupational disease, if a volunteer firefighter gets injured or dies, a problem arises. Volunteer firefighters are in various difficult legal relationships as far as their promoter is concerned (mostly corresponding to the municipality where they are). They are frequently carrying out this activity free of charge or for a symbolic fee in an employment relationship established by an agreement to complete a job. If such a firefighter gets injured or dies, the victim or his/her family receives little or no support.[49]

The compensation provided for a volunteer firefighter who is an employee and suffers a damage is regulated by Act no. 133/1985 Coll., On fire protection, as amended (hereinafter only referred to as the 'Fire Protection Act'), as well as by the Labor Code.

According to the opinion stated by the Ministry of Labor and Social Affairs of the Czech Republic, File no. 2009/60163-51 of 21.8. 2009, a volunteer firefighter who suffers a health impairment is entitled to seek reimbursement according to the cited provision art. 393 of the Labor Code and according to art. 29 par. 1 let. b) of the Fire Protection Act. If a volunteer firefighter is injured during his/her training or when being deployed, then the his/her insurance for the event of suffering a damage is primarily governed by labor law, if he/she is in an employment relationship.

47 These are different types of firefighters' units, which are divided according to the degree of readiness to intervene. Volunteer firefighters serve in all these units. An exception is the fire brigades set up at major or hazardous undertakings, which use the services of professional firefighters. However, these firefighters are hired and work under the Labor Code.

48 In 2020, firefighters were deployed more than 42,700 times, with the municipal volunteer firefighters participating in 31.5%, the company-internal firefighters in 5.4% and the company-internal volunteer firefighters in 0.5% of the cases.

49 Number of injured firefighters in recent years: 123 (in 2016), 209 (2017), 173 (2018) and 170 (2019). Czech Statistical Unit, 2020 issued this as a supplement to its magazine 112, No. 3. The statistical finding has not been published as an art. it is a state report.

The security of an employee if he/she suffers from an occupational disease, or an occupational accident is still not being addressed by accident insurance within the Czech Republic, but by the employment law regulations and the employer's liability for damages.[50] This is due to the institute of the employer's strict liability for the result—for the health impairment (damage) that an employee suffers while performing work tasks or in direct connection with it. The employer is liable even if another person causes the damage. To the extent that employer is liable for the damage, the employer is obliged to compensate the employee who has suffered an occupational accident or who has been diagnosed with an occupational disease for the loss of earnings, the pain suffered, and increased difficulty in socializing; furthermore, the employer must compensate treatment costs and possibly also material damage. If an employee dies as the result of an occupational accident or disease, the employer is obliged to provide the following, within the scope of its responsibility: compensate purposefully incurred treatment costs, appropriate funeral expenses, expenses for supporting the surviving spouse, a one-off compensation for the survivor, and possibly a material damage compensation.[51]

According to art. 271p par. 1 sentence 1 of Labor Code, the following applies:

> An employee who suffers…in a fixed-term employment relationship or when performing work under a fixed-term agreement to perform work shall be entitled to receive compensation for a loss of earnings only until the time when such an employment relationship is to end. When this period elapses, he/she is entitled for a compensation due to loss of earnings if it can be assumed, depending on the circumstances, that the affected person would have been employed further on.

Although the regulation in question governs only one of the claims of the injured employee, it is usually the financially most demanding one. The purpose of this regulation is to limit this entitlement to employees who are performing the gainful activity only occasionally or who for whom the gainful activity does not represent the main source of income, which is why they have entered into a fixed-term

50 Act No. 266/2006 Coll., On accident insurance, has not yet become effective as far as most of its provisions are concerned (cf. art. 99 cit. of the Act) and according to the decision made by the government, this will not happen in the future. See e.g., the statement of the Minister of Health, 2012.

51 Based upon the Soviet model, the legal regulation in question was introduced virtually at the beginning of the 1960s has not changed even when the new Labor Code was adopted. Yet at present, it no longer corresponds to the fundamental changes in society, nor those in the national economy that have taken place since then. With effect from 1 January 1993, a new statutory insurance for damage caused to employees due to an occupational accident or an occupational disease was introduced in 1993, but this (then declared) temporary measure only mitigated the problem, without actually solving it. Unfortunately, the current regulation shortcomings are even more significant when it comes to volunteer firefighters. In this case, a volunteer firefighter's activities is regulated only via an agreement to complete a job.

employment relationship only on an occasional basis and would no longer work in that employment relationship, even if the occupational accident had not occurred. For this reason, it is also necessary to include employees performing work based on an agreement to complete a job, although this type of employment relationship is not explicitly mentioned in the Labor Code. Otherwise, an absurd situation would arise where employees working quantitatively for the potentially shortest number of working hours would enjoy greater security than employees working on a fixed-term basis, or an employment-law relationship established by agreement to perform work.

An employment relationship or another employment relationship type agreed for a definite period, which is usually the case with voluntary firefighters, terminates irrespective of the situation in which the employee finds himself. In such a case, the right of an employee to receive compensation for a loss of earnings is conditional by the proof that, if the occupational accident or the occupational disease had not happened, he/she would have been employed further on. However, this is a complicated issue due to the secondary nature of such an employment, i.e., the dependence of the agreement to complete a job on the budgetary possibilities of the municipality and the amount of this income. Current Supreme Court jurisprudence also offers some interpretation space in this regard. The entitlement to compensation for a loss of earnings also arises when a volunteer firefighter's further employment can only be assumed depending upon the circumstances.[52] We can reasonably presume such a situation only when considering the circumstances that existed at the time of the accident, indicating whether the employee had entered into a fixed-term employment relationship only occasionally (and anyway would not have worked after the agreed period), or whether the gainful activity was the primary source of income and the employee had been working regularly until then (and it can therefore be assumed, depending upon the circumstances, that s/he would have been re-employed after the termination of the employment relationship).

> If a worker succeeds in proving this fact, compensation for the loss of earnings may be granted up to the amount of the average earnings which he achieved permanently at the organization in which he suffered an occupational accident.[53]

The significant problem consists in the difficulty to prove the earning loss amount. In accordance with applicable jurisprudence, when determining the average earnings prior to suffering the damage, we cannot base this upon the income the injured party received from the former employer, if it is about the right to compensation of damages for a period following the time when the employment relationship ends

52 See the Czech Supreme Court judgement of 6. 6. 2006 file no. 21 Cdo 2023/2005.
53 Assessment of the NS ČSR (Supreme Court of Czechoslovakia) from 27. 1. 1975, file no. Cpj 37/74 (R 11/1976, pp. 51–52).

between the employee and the employer, who is liable for the loss, and if the employment relationship ends for reasons other than the impact of an occupational accident. The Supreme Court ruled that in such a case, there is a causal connection between the occupational accident and that loss of earnings based on the average earnings that the injured employee would have demonstrably achieved from another employer for the work he would have done for him if the accident had not occurred.[54] In such a case, the injured employee is essentially forced to prove how much he would have been paid for work done for another employer if he had not suffered the occupational accident or an occupational disease. The situation becomes much simpler if the injured employee becomes a job seeker. In such a case, the law defines that the earnings received after an occupational accident shall be regarded as equaling the minimum wage earned. However, if an employee had already been receiving compensation for a loss of earnings after the end of an incapacity to work prior to becoming a jobseeker, he shall be entitled to a compensation equaling the amount to which he became entitled during the employment relationship.

3. EU Law

The Czech labor law must respect EU law as the Czech Republic has become a part of the EU. According to art. 10(a) of the Constitution, declared international treaties are part of the Czech legal order when they have been approved by the Czech Parliament, ratified by the president, and are binding for the Czech Republic. International treaties supersede national law if there is a conflict (in the case of 'self-executing treaties'). That means if there is a differing regulation in the international treaty and in the national law, the regulation of the international treaty prevails.[55] Two principles govern the relation between Czech law and EU law which has been derived by the CJEU—the principle of priority and the principle of direct applicability.[56] However, the application of both principles is limited by the tenant of subsidiary as it is set down in art. 4 and 6 of the Treaty on the Functioning of the European Union. EU law is a specific part of Czech law, because sources of EU law which are directly applicable in all Member States cannot be amended or reproduced by the Czech legislature. Such

54 See the judgment of the Czech Supreme Court of 10. 12. 2002, file no. 21 Cdo 1185/2002 (R 64/2003).

55 Another important rule is incorporated into art. 95, paragraph 1 of the Constitution. According to this article, a judge decides cases bound by an international treaty, which is a part of the legal order. As proof see, Land Court in Prague decision of 29 January 1999, 6 A 85/97. Land Court in Prague, 2002.

56 The ECJ ruled in the case *Commission* v. *French Republic*: 'Since the provisions of art. 48 (of the EC Treaty, today art. 39) and of Regulation no. 1612/68 are directly applicable in the legal order of every Member State, and Community law has priority over national law, these provisions give rise, on the part of those concerned, to rights which the national authorities must respect and safeguard and as a result of which all contrary provisions of internal law are rendered inapplicable to them.' See C-167/73 *Commission* v. *France*.

sources of EC law (e.g., regulations) come into force solely by virtue of their publication in the Official Journal of the European Union.[57]

3.1. Working Time

The provisions concerning working time and rest periods primarily concentrate on the protection of employees against exploitation of their labor; only to a lesser extent does it aim to provide an employer with an experienced organization of working time. Thus, the Labor Code prescribes the maximum limits of working time and minimum limits of rest periods, which were to be adjusted in accordance with EU law. Statutory regulations are universally applicable and cover the whole territory of the Czech Republic. Due to historical reasons, collective bargaining has a significantly weaker position compared to Western Europe. If there are collective agreements, they are mostly negotiated at the plant level. Generally speaking, social partners are not very active in working time matters. Therefore, the position of the state remains to be very strong despite it being more than 25 years since the end of the Communist regime in the former Czechoslovakia.

As in the German regulation, the Czech regulation also distinguished on-call time at the workplace, which was not considered to be working time. This has changed thanks to the case law of the CJEU, in particular cases like Pffeifer[58] or Jäger.[59] Vorel was a Czech version of those cases.[60] Following these decisions, the Czech legislature regulated that on-call time held at the workplace is considered working time. According to Section 78 para. 1 Lit. A of the Labor Code, working time is defined as a period either when an employee is required to render service for an employer or when an employee is ready to work under the employer's supervision at the workplace. Hence, all the time in which an employee is present at the workplace is considered working time even when the employee is not working (e.g., when a doctor is on call but not actually working in the hospital).

An employee may contract an agreement with an employer for shorter working hours. The Labor Code does not lay down reasons, but parties usually make such agreements because of an employer's operational imperatives or due to an employee's health or other private problems. Such an agreement regarding shorter working times may be contained within the employment contract or within a separate contract (or at any later time during the employment relationship). Provided an agreement on shorter working time is reached, the employee's duty to perform the agreed work and the corresponding

57 See CJEU Cases C-93/71, Orsolina Leonesio v. Ministero dell'agricoltura e Oreste; C-39/72 Commission of the European Communities v. Italian Republic; and C-34/73, Fratelli Variola S.p.A.v. Amministrazione italiana delle Finance. The ECJ inferred in Case C-39/72 that all methods of implementation are contrary to the EC Treaty because they would result in the creation of an obstacle to their direct effect and simultaneous and uniform application in the whole European Community.

58 CJEU judgment of 5 October 2004, Bernhard Pfeiffer et al., cases C-397/01 to C-403/01.

59 CJEU decision case C-151/02, Landeshauptstadt Kiel v Jaeger, and the decision in the joint cases C-397/01 to C-403/01).

60 CJEU C-437/05.

duty of the employer to assign the employee work during the whole working time (set forth in the Labor Code) are restricted only to the stipulated period of working time. The shorter the time an employee renders his/her service, the lower is his/her remuneration. Such an employee shall not be required to work overtime but may agree to do so.

Unless there is an enforceable contract that determines working time in another way, the employer is authorized to set down and change the length and distribution of working time. The distribution of working time involves particular issues concerning the beginning and end of shifts on individual workdays, the determination of breaks, the division of the workday, and the distribution of working time over a certain number of days. According to Section 99 of the Labor Code, an employer shall consult with trade unions in advance regarding collective measures concerning working time. In distributing working hours, the employer shall consider such factors as the capacity of public transportation facilities, occupational safety, and public interest.

The Labor Code distinguishes two basic work regiments: the regular regiment of working time and the irregular regiment of working time. After the most recent amendments, the regulation is rather unclear on these points. However, the following distinction can be derived from the Labor Code: the regular regiment of working time is applied when an employee renders service for the same length of working time in every work week. If an employee's hours vary in different weeks, the irregular regimen of working time is used.

One of the real (not simply proclaimed) changes that the Labor Code of 1 January 2007 brought was the establishment of the working time account. This account is another way of planning working time and can only be used by an employer who is not linked to a public budget. The core of the working time account lies in the definition of an account period—a period throughout which the working time account will be applied toward employees. Employees working under the umbrella of a working time account must render service. However, they may be paid according to wage rates set, to a certain degree, independently from the work performed. Within this account period, the employee can be given work above or below the normal working hours—this can happen without the previous consent of the employee. If there is no collective agreement that contains a stipulation for a longer stretch of time, the settlement period may last for a maximum of 26 subsequent weeks. However, a collective agreement can only define the settlement period for a time of up to 52 subsequent weeks. The maximum limits for the working time account are mandatory.

The working time account is advantageous for the employer. By introducing it, the employer can not only be more flexible with the working time in response to his/her needs, but the employer can also save money (e.g., through deferred payments and a different conception of overtime). A clear disadvantage is insufficient legal regulation, the absence of judicial decisions, as well as higher administrative costs regarding proof of working time and salaries. Although the working time account can be substituted to a certain extent, it is not possible to reach effects comparable to the possibility to demand a lower amount of work than the set weekly working time or other assessments of impediments on the employer's side.

3.2. Not Enough Time

Some branches of the Czech economy have always had problems with strict labor law provisions on limited working time. Understaffed hospitals pushed the legislature to waive EU based limits for 2008–2013. The Czech legislature made use of an article from directive 2003/88/ES, which enables a member state to alter the maximum weekly working time of 48 hours under certain conditions. Further regulations concerning overtime work were also introduced.[61] During COVID-19 time, the legislature decided to not to react, and we can only guess how healthcare providers managed to keep working time records in undermanned facilities.

A similar problem relates to professional firefighters who were lodged to CJEU.[62] In said case, a firefighter was forced to remain ready to participate in action within two minutes from the call. However, the employer, being a legal entity founded and controlled by Prague, classified that period as breaks in work[63] and enjoyed for it a wage-free legal regime. The Ministry of Labor and Social Affairs answered the CJEU's request for opinion that the employer shall not demand the performance of work within breaks, but he or she may insist on the obedience of instructions concerning occupational safety. In September 2021, the CJEU held that those breaks constitute 'working time' within the meaning of EU law.[64] In October 2021, the Constitutional Court of the Czech Republic abolished the relevant decisions of the civil courts (the Supreme Court's decision included), holding as a matter of law that there was a violation of the right to fair remuneration in relation to the employer's requirement to be available during break times.[65]

In 2022, the Czech Republic faces a record number of proceedings for breach of the obligation to communicate properly and for breach of the obligation to implement EU directives.[66]

4. Conclusion

The Labor Code of 2006 and its amendments enacted following years introduced several rewritten or new regulations that increased the flexibility of working time (e.g., working time account, fixed-term contracts or offsets against the employee's wages).[67] Apart from those regulations concerning working time, the government has not met its obligation to implement the principle of flexicurity in the law yet.

61 Act No. 294/2008 Sb. effective from 01.10.2008.

62 C-107/19 Dopravní podnik hl. m. Prahy (Transportation Facility of Prague).

63 The employer decides the beginning and end of breaks in work after consultations with the respective trade union organization. Breaks in work are considered an example of periods of rest.

64 CJEU judgment of 9 September 2021, C-107/19.

65 Constitutional Court judgment of 18 October 2021, docket file No. II.ÚS 1854/20.

66 See https://ec.europa.eu/ (Accessed: 17 February 2022).

67 However, it was not a new regulation. It was only over time that the period for which fixed-term employment could be concluded was substantially extended. From the original 2 years to up to 9 years.

Generally, we cannot say that the concept of 'flexicurity' has been fully recognized by Czech labor law. Nevertheless, it is possible to highlight some specific rules that have led to a greater flexibility in Czech labor law. For example, regulations concerning fix term contracts and temporary agency work.[68]

However, the real transformation of Czech labor law took place during the pandemic and subsequent ongoing war in Ukraine. Although formally not so much has changed in the current labor law regulation, society has conceived a completely different understanding of homework. Despite the explicit regulation in the Labor Code, according to general practice, the employer is entitled to order the employee to work at home. In the context of the war in Ukraine, the regulation of the so-called labor market test was broken. Thanks to the invocation of union temporary protection and a set of new Czech statutes, tens if not hundreds of thousands of Ukrainian refugees were granted as a overnight success the right to work on the Czech labor market in a form equal to EU citizens; something that was otherwise impossible to enforce for decades.

Major problems have emerged in occupational health and safety. When an adequate regulation is missing, employers are unable to provide for a safe working environment. Given the current legislation, an employer simply cannot require employees to measure their temperature, undergo a COVID-19 test, or work at home. The inspiration for amending labor law is the crisis law, where, based on a government resolution, critical employees were required to measure their temperature and communicate the temperature measurement result to their employer.[69] Critical staff who were reported—based upon an epidemiological survey—that they had got into close contact with a person who had been diagnosed with COVID-19 are classified into the groups of indispensable and dispensable, based on their work, and this decision is made by the critical infrastructure entity. Indispensable critical staff, who must continue performing their work, must comply with increased testing and reporting obligations.

Given the absence of the right to order the appropriate crisis measures according to the Crisis Act, in the case of critical employees is it not possible to order compulsory vaccination, which obviously poses a problem, so the question is whether employers should not be offered a solution for what to do with employees who do not want to be vaccinated, although otherwise their safety at the workplace cannot be provided for.

Especially last year revealed that the compensation for voluntary firefighters who suffer an injury is entirely inadequate and requires changes to be able to provide for

68 Again, temporary agency work was already regulated in the previous Labor Code (Act No. 65/1965 Coll.) since 2004. The change came with the new Employment Act (Act No. 435/2004 Coll.). On the other hand, the conditions of temporary agency work have undoubtedly changed with the Labor Code and work agencies were on the winning side of those new regulations.

69 This is due to the Resolution of the Government of the Czech Republic No. 140/2020 Coll. of 30 March 2020 No. 332, on the adoption of a crisis measure, or rather with effect from 17 November 2020 from 00:00 by Government Resolution No. 1185 published in the Collection of Laws under No. 462/2020 Coll.

occupational safety and health of firefighters who diligently, voluntarily, and constantly expose their health to hazards to rescue people at risk. Given the analysis of legislation and decision-making practice[70] we have carried out, the most appropriate way seems to be to define within the relevant legislation that volunteer firefighters do not to undergo training nor be deployed as municipal employees, but to consistently act as volunteer firefighters performing this activity free of charge, as in this case, the state is obliged to provide for compensation for the damage they suffer as if they had suffered it in their main employment, where they earn their living.

This paper examines the level of implementation of flexicurity in the Czech labor law. One of the basic principles the new Labor Code of 2006 should have been founded upon was the principle called freedom of contract. Because of this rule, both the employer and employee should have been permitted to establish, according to their needs, the mutual rights and duties of their labor relationship to a greater extent than before. However, the final and approved version of the respective sections in 2006 did not satisfy anybody. It was too complicated and ambiguous. Due to a complaint, the principle of the freedom of contract has been examined by the Constitutional Court of the Czech Republic. The Constitutional Court repealed certain provisions and profoundly simplified the principle. Nevertheless, the Labor Code remains very protectionist toward employees.

Acknowledgement: This article was written and published thanks to the financial support of the grant project COOPERATIO/LAW.

70 The research was carried out in the years 2020 and 2021. Legal regulations, court decisions and decision-making practice of the fire brigade were analyzed. The results of the research were taken over by the Ministry of Labor and Social Affairs for further use. Due to a decision of the Ministry, the results of the research cannot yet be published.

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