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Czech Law in Global Context

Labour law

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Lecture outline

1. Czech labour law in general
2. Dependent work and fundamental labour-law relations
3. Protection of employee as fundamental objective and principle of labour law
4. Problem with enforceability of Czech labour law

Constitutional background

Charter of Fundamental Rights and Freedoms

- **Chapter four** (Articles 26-35: Social, economic and cultural rights)
 - **right to work and free choice of profession** (article 26),
 - **right to fair remuneration** for work and **satisfactory working conditions** (article 28)
 - **right to freely associate with others** to protect one's **economic and social interests** (article 27)
 - **right to increased occupational health protection and special working conditions for women, minors and persons with disabilities** (article 29)

International conventions (ILO etc.), ...EU Law

implemented in particular by means of codes / statutes

Structure of Czech labour law

Individual labour law

- In particular, regulation of **fundamental and derived labour-law relations** related to performance of **dependent work** by individual employee to individual employer.
- *Rules on establishment and termination of fundamental labour-law relations, remuneration, working conditions (working hours, occupational safety and health) etc.*

Collective labour law

- In particular, regulation of relations between **representatives of employees** (mainly trade unions) on the one side and **employer or employers association** on the other side
- *Rules on collective agreements, collective bargaining, information and consultation of certain issues etc.*

Law of employment policy

- In particular, regulation of relations between **the state** (and its bodies) and **job seekers, employers, employment agencies etc.** regarding the implementation of **state employment policy**.
- *Rules on job search support, unemployment benefits, employment permits for foreigners etc.*

Act No. 262/2006 Coll.,
Labour Code

prevailing private
law character

Labour
Code



Act No.
2/1991 Coll.,
on
**Collective
Bargaining**

Act No.435/2004 Coll., on
Employment

prevailing public
law character

Labour-law relations and Civil code

As can be seen from the above, a large part of labour law falls within the area of private law, where it currently forms **the only other codified legal sector besides civil law.**

In accordance with Section 4 of the Labour Code, the Civil Code as a general private law act is applied in labour relations in a **subsidiary manner** (especially if the Labour Code does not regulate a certain issue differently or at all) and **always in accordance with the fundamental principles of labour relations.**

Dependent work and fundamental labour-law relations

Section 3 of the Labour Code:

- **Dependent work** may be carried out **exclusively within fundamental labour-law relation** unless otherwise regulated by other statutory provisions. Basic labour relationships are an **employment relationship** and legal relations based on agreements on work performed outside the scope of employment relationship.

Section 2 of the Labour Code:

- (1) Dependent work means work that is carried out within the relationship of the employer's superiority and his employee's subordination in the employer's name and according to the employer's instructions (orders) and that is performed in person by the employee for his employer.
- (2) Dependent work is performed **for wage, salary or other remuneration for work done**, at the **employer's cost and liability**, at the **employer's workplace or some other agreed place within the working hours**.

Defining signs

Mandatory conditions

Sections 74-77 of the Labour Code

- **Agreement to Complete a Job**
 - max. **300 hour of work per year**
- **Agreement to Perform Work**
 - on average, no more than **half of the standard weekly working hours in employment relationship** (generally 20 hours) **per week**

Precarious employment

service relationships of civil servants (Act No. 234/2014 Coll., on civil service), **members of security forces** (Act No. 361/2003 Coll., on service relationships of members of security forces) and **professional soldiers** (Act No. 221/1999 Coll., on professional soldiers).

Special public law relations, to which the **Labour Code** applies only if directly referred to.

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Illegal work

Section 3(e)(1) of the Employment Act:

- *Illegal work means **dependent work** performed by a natural person **outside the scope of labour-law relation**.*

Section 139 and 140 of the Employment Act:

- administrative sanctions for **carrying out illegal work** (for "employees") – in particular **a fine** of up to **100,000 Czech crowns**
- administrative sanction for facilitating the performance of illegal work (for "employers") – in particular **a fine** of up to **10,000,000 Czech crowns**, but **not less than 50,000 Czech crowns**.

Section 555 of the Civil Code:

- *A legal action is considered **according to its content**.*
- *If a legal action is intended to **mask (disguise) another legal action**, it shall be considered **according to its true nature**.*

Number of Czech citizens found to be working illegally:

2012: 2 675, 2015: 1 913, 2018: 763, 2020: 556

Section 1a of the Labour Code:

- (1) The **meaning and purpose** of the provisions of this Act are also expressed in the **fundamental principles of labour-law relations**, which are, in particular
 - a) **special legal protection of the employee's status**
 - b) (...)

limitation of contractual freedom (rules that protect the employee cannot be derogated from to the employee's disadvantage – maximum working hours (40 hours per week), minimal remuneration (CZK 103,80 per hour, CZK 17 300 per month), minimal vacation leave (generally 4 weeks per year) etc.

Extensive protection in the event of termination of the employment relationship (not applicable to relations under agreement to complete a job and agreement to perform work):

- The **employer** may **unilaterally terminate the employment relationship only for reasons defined by law**, except for termination during the probation period,
- there are **protection periods** during which the employer **cannot terminate the employment relationship for certain reasons** (sickness, maternity and parental leave, etc.),
- compulsory **consultation with the trade union on termination of employment**,
- **severance pay** in the event of termination of employment for organisational reasons (1 to 3 times average monthly earnings) or for incapacity caused by an occupational accident or disease (12 times monthly earnings).

Protection of the employee in the event of **causing damage in connection with the performance of work tasks** (for example limitation of the maximum amount of compensation for damages caused by negligence - no more than 4.5 times the monthly earnings)

Protection of employees **in the event of inability to assign work** for reasons attributable to the employer or **for external reasons beyond the employer's control**, such as the **covid-19 pandemic** (**Employers are always obliged to compensate employees for lost wages** - usually at 100% of average earnings; during the pandemic, employers' compensation costs were covered by special state programmes – the main one was called Antivirus).

Problem with enforceability of Czech labour law

methods of individual labour law dispute resolution (× control and sanction activity of state authorities - in particular labour inspection)

- **COURT PROCEEDINGS** (✓) – lack of specialised courts, high costs, long duration of proceedings (**common way**);
- **ARBITRATION PROCEEDINGS** (✓) **only disputes concerning rights and obligations of a property nature** - payment of wages, payment of wage compensation, payment of compensation for damages, etc., (×) **disputes concerning termination of employment, etc. (uncommon way)**
- **MEDIATION** (✓) – lack of direct enforceability of the mediation agreement, common disagreements between the parties that prevent the commencement of mediation (**uncommon way**);
- **OTHER ALTERNATIVE DISPUTE RESOLUTION** (conciliation committees within the employer or employers' association, etc.) - (×) – **lack of regulation.**

Section 72 of the Labour code

Nullity (invalidity) of termination of an employment relationship may be claimed both by the employer and the employee before the competent court within two months of the date when the employment relationship in question ought to have come to an end as a result of such termination.

- nullity **only arises** in the case of a final court decision initiated by a **special action brought within the 2-month period (protection of legal certainty)** - the only way is to start court proceedings;
- if the employee has notified the employer that he/she wants to continue to be employed, and **if the court determines that the termination is invalid**, the employment relationship **continues as if it had never been terminated**.

S average length of court proceedings until final decision (in regional and district courts) in given cases (for 2021): **586 days (in the Central Bohemian Region even 986 days)** – is the purpose of section 72 of the Labour code (protecting the legal certainty of the parties and seeking a fast return of the employee to work) fulfilled after 2 a 3 years of court proceedings?

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S **Number of final court decisions in the given cases** (for 2021): **650**, and in labour disputes a total of **2 828 out of a total of 463 488 decisions in the civil agenda** of district and regional courts (**about 0.6% of the total number of final decisions**): **low number!**

Conclusion

As a result of the above and other circumstances, Czech labour law **remains partly only a law on paper, but not in action** (enforced effectively by one party against another).

The activity of parties to protect and enforce their rights is often **replaced by means of public law supervision** - employee initiatives to carry out inspections by the labour inspectorate.



Thank you!
Have a nice day!

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