HUNGARIAN LABOUR LAW
E - J O U R N A L

Legal Protection against (Tele)Bullying and Stress in the Workplace in the Slovak Republic

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1. Introduction[1]

The calendar year of 2020 is influenced by the main mover, which is the COVID-19 pandemic. As a result of measures taken by individual states, the labor market is changing significantly on a larger scale, as well as are the usual ways of performing work at individual workplaces. The distance form of work through information technologies comes to the fore. Regardless of the duration of the global pandemic (and let us be optimistic, we believe that the pandemic will not be with us forever), the trend of shifting the way work is performed to distance forms is irreversible.

The pandemic has made us forget the fact that society is facing new societal changes, which are also referred to as industrialization 5.0. In the coming decades, up to more than 60% of the workforce in some Member States of the European Union is expected to lose their jobs due to the introduction of information and communication technologies. These gloomy considerations mainly concern countries where the labor market is tied to manual work, such as Romania, Bulgaria, but only to a slightly lesser extent the V4 countries, including Slovakia.[2]

New ways of doing work, however, also bring new risks. The aim of this paper is to point out the risks associated with new forms of employment using technological means in connection with the protection of employee health. And in this context, to analyze the legal options for protection.

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2 Prepared according http://www.europarl.europa.eu/RegData/etudes/STUD/2018/614539/EPRS_STU(2018)614539_EN.pdf.

2. Distance form of work performance

The legislator's efforts to respond to new forms of employment in order to provide the necessary legal framework for carrying it out cannot be completely denied. Also, as a result of the initiative of the social partners at the European level,[3] the Labor Code has incorporated legal regulation of domestic work and telework to cover the market requirements for flexible work performance at a distance.

From the perspective of theory of law, we can define telework as the performance of work through information technology, which the employee performs mostly at home or in a place that is not a typical operation of the employer and which is characterized by a higher degree of independence of work performance. The indisputable advantage of teleworking is, from the employer's point of view, the reduction of economic costs of labor, and for the employee this form of work should bring greater independence and wider opportunities to reconcile work and family life (this is not always the case). The legal risk of teleworking is considered to be, in particular, the conflict of two counteracting rights, namely the employer's right to check the performance of work and the employee's right to privacy.[4]

However, we also consider insufficient or incorrect legal regulation in relation to the employee's constitutional right to rest after work to be another risk. The provisions on the distribution of fixed weekly working hours, uninterrupted daily rest, uninterrupted weekly rest and breaks do not apply to the teleworking mode. We consider the exclusion of the legal regulation of continuous daily rest and continuous rest during the week to be critical. Employers may also interpret the legislation in question in such a way that the employee is obliged to be available at any time, ad absurdum, that the employee is obliged to work continuously. However, such unilateral conclusions are in conflict with the constitutionally guaranteed social protection of the employee, of which the right to adequate rest after work is also an immanent part (Art. 36 (e) of the Constitution).

Lately, there has been a lot of discussion about a right to disconnect. It must be said, that the right to disconnect is not regulated in the Slovak legal system. Theory and practice in Slovakia recommend that the employee enforce the so-called right to be disconnected from the network (right to be disconnected), i.e. not to be disturbed by the employer on non-working days.[5] Some authors point out that the right to disconnect should be implemented mainly through the collective agreements that can ensure balance between work and family life.[6]

There are also opinions that consider the right to disconnect as too strict for the employers. According Pansu the right to disconnect legislation will continue to spark debate in its current form. The "right to

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3 During its consultations on modernizing and improving employment relations, the European Commission called on the European social partners to start negotiations on teleworking issues. The negotiations resulted in the conclusion and signing of a European Framework Agreement on Teleworking by the European social partners (ETUC, UNICE / UEAPME and CEEP) at the highest level on 16 July 2002. See also J. Žuľová: Implementing Telework Agreement in Slovakia. In: *Proceedings: 5th Mediterannean Interdisciplinary Forum on Social Sciences and Humanities (5, 2017; Barcelona).* European Scientific Institute, 2017. 20–30.

4 H. Barancová: *New Technologies in Labor Law and Employee Protection (Possibilities and Risks).* Prague, Leges, 2016. 115.

5 Ibid. 116.

6 M. Avogaro: Right to disconnect: French and Italian proposals for a global issue. *Law J. Soc. & Lab. Rel.,* vol. 110. (2018).

a chosen connection" appears to be a more flexible terminology for the workers and the organizations, and could, therefore, be more accommodating in the current work environment.[7]

In general, there appear to be two paradigms for addressing problems associated with enhanced communication technology involving connectivity and immediacy. One approach, refers to as the "French Legislative Model," attempts to regulate after hours' electronic communication between employer and employee through statutes and lawmaking. This approach has, by far, gained the most publicity. The second method, what may be refers to as the "German Self-Regularity Model," involves voluntary self-determination in which private firms adopt policies that fit their individual or industrial needs. This tactic comes from the belief that any government action is a legislative overstep.[8]

Back to the Slovak legislation. With regard to national law (and we believe that applies in theory labour law in general as well), even in the absence of an agreement on the right to be disconnected in an employment contract, this right always belongs to the employee, regardless of the fact that the Labor Code explicitly excluded the provisions on uninterrupted daily rest and uninterrupted weekly rest from teleworking. We argue with generally valid rules.

Any legal rule must not be interpreted strictly grammatically, but always with regard to constitutional guarantees, and last but not least, the "spirit of the law" must be borne in mind. The social protection under the Code does not lie only in the text of the law, but above all in the way it is interpreted. The protection of work and the protection of the (mental) health of the employee cannot remain on an imaginary level; on the contrary, it must be reflected in the actual implementation of every employment relationship.

If the employer repeatedly requires the employee to perform the tasks immediately and in unreasonable time for the employee, even if it is not necessary due to their content, focus or importance, such action of the employer shall not have any legal protection because of the conflict with the prohibition of abuse of rights, which is part of the Labor Code's basic principles. The exercise of rights and obligations arising from employment relationships must be in accordance with good morals; no one may abuse these rights and obligations to the detriment of the other party to the employment relationship or the co-workers (Art. 2 basic principles of the Labor Code). Exercise of the right contrary to the constitutionally guaranteed minimums cannot be a fair exercise of such right.

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7 L. Pansu: Evaluation of 'Right to Disconnect' Legislation and Its Impact on Employee's Productivity. In: *International Journal of Management and Applied Research,* 5/2018. 99–119.

8 C. W. Bergen – M. Bressler: Work, Non-Work Boundaries and the Right to Disconnect. *Journal of Applied Business and Economics*, Vol. 21., Iss. 2., 2019. 51–70.

3. Health risks of the employee arising from information and communication technologies

Employers often require extreme flexibility, even in standard employment. According to their ideas and needs, the employee is obliged to be always online, to perform tasks immediately, or even several tasks at the same time. And it is indeed such a way of performing work (multitasking) that is associated with increased mental effort and stress, which can lead to tele bullying.

Linked to the stress from the telework the term "technostress" (simplified translation from the English term technostress) is being adopted, which is not a new term, but it is acquiring new content. The term technostress was coined, (with the attachment of its original meaning), as early as the 1980s and represented resistance to and stress from new technologies due to ignorance of how to work with them. Pathological psychology referred to technostress as a modern disease, which consisted of an adaptation disorder caused by one's inability to work with modern technologies.[9]

Today, the content of the term technostress is changing and evolving. The basic problem is no longer ignorance of computer technologies, but their preponderance and extraordinary workload placed on employees. New mobile phone technology, which allows you to be connected anytime and anywhere, on the one hand unifies the work environment by making work emails and documents accessible, on the other hand, it requires one's constant online connection. The physiological consequences of technostress are most often considered to be back pain, hand strain as a result of its long-term and unilateral use (so-called RSI - repetitive strain injury) and visual fatigue syndrome. It has been repeatedly emphasized that these health problems are associated with psychosocial factors of work stress, or that technostress is often mentioned as one of the causes that contribute to the onset of those ailments. From the mental aspect, the most frequently mentioned consequences of technostress are memory disorders, reduced concentration, impatience, unpleasant sweating, bouts of anger, problems with relaxation and sleep, headaches and other psychosomatic disorders. Today, more and more people are affected by technostress, so there are even proposals to recognize technostress as a separate occupational disease.[10]

Overloading with technology leads not only to psychosomatic disorders, but also to invasion of employees' privacy. This phenomenon is called the "technological paradox".[11] Technological progress, which was intended to make work easier and simpler for employees, ultimately leads to their greater burden. Employee questionnaires confirm that some of the workers feel the need to work faster and under pressure from the schedule of tasks, even in cases where there are no reasons to believe the

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9 A. Suh – J. Lee: Understanding teleworkers' technostress and its influence on job satisfaction. *Internet Research,* Vol. 27., Iss. 1., 2017. 140–159.

10 Z. Židková: Technostress. *Occupational safety and hygiene,* no. 4., 2004. 11.

11 M. Hajli – J. M. Sims – V. Ibragimov: Information technology (IT) productivity paradox in the 21st century. *International Journal of Productivity and Performance Management,* Vol. 64., No. 4., 2015. 457–478.

tasks require such execution.[12] In this context, the risk of multi-tasking, which aggravates stressful situations and inner experience of stress, is particularly emphasized.[13] The logical question thus arises as to what possibilities of legal protection employment law provides to employees.

4. Legal options for employee protection

If the employer repeatedly requests the employee to perform tasks immediately and at the time unacceptable for the employee, such instructions should not be binding on the employee, at least as far as the deadline for their performance is concerned, as the employer's actions appear to bear the hallmarks of abuse of rights. Suppose that an employer abuses the right of instruction and imposes bullying tasks on the employee. Any sanction of the employer for failure to perform such tasks is thus legally unsustainable and the employee has the possibility to make use of standard legal protection, which often leads to an action for invalid employment termination. The question remains how the employee should (can) actively eliminate the undesirable situation during the employment relationship.

A complaint addressed to the employer is likely to miss the mark, as is expected to be the case with a complaint made to the relevant labor inspectorate. The practice of the labor inspectorate lags behind technological progress to a certain extent; the supervisory authorities are monitoring labor standardization and compliance with labor law regulations, which can be sufficiently quantified and classified. In cases of abuse of rights or discrimination, they usually refer to the right to judicial protection. However, employee representatives, who are best acquainted with the employer's situation and should exert sufficient pressure to prevent abuses, should definitely be active. However, exaggerated optimism is not appropriate in this regard either. Technostress is tied to a higher-skilled workforce with a greater degree of independence, where the real interference of employee representatives in the way the employment relationship is implemented is generally lower.

If we disregard the alternatives outlined and focus on the possibilities of judicial protection, the employee theoretically has the right to seek redress through the institute

a) of abuse of rights,
b) the prohibition of harassment as a conceptual component of the wider prohibition of discrimination; or
c) damages and non-pecuniary damages.

[12] C. Sellberg – T. Susi: Technostress in the office: A distributed cognition perspective on human-technology interaction. *Cognition, Technology and Work,* Vol. 16., Iss. 2., 2013. 187–201.

[13] S. T. Oh – S. Park: A Study of the Connected Smart Worker's Techno-stress. *Procedia Computer Science,* Vol. 91., 2016. 725–733.

4.1. Ad a) abuse of rights

The prohibition of abuse of rights is defined in Art. 2 of the basic principles and § 13 of the Labor Code (it is one and the same regulation) as a generally valid prohibition to abuse rights and obligations to the detriment of the other participant in the employment relationship or that of co-employees. The prohibition applies to both the employer and the employee.[14] The content of the prohibition of abuse of rights concept (similar to good morals) is taken up by case law,[15] which emphasizes that if a party to a legal relationship formally acts within the limits of its right, but through its implementation it aims to aggrieve the other party to the respective legal relationship, this constitutes the case of exercising one's right but a faulty exercising of that right at that. Such conduct occurs not with the objective of achieving results which the positive right aims to protect, but only with the purpose of formal compliance with the law. Therefore, such exercise of a right, even if formally in compliance with the law, must be regarded as a mere apparent abuse of a right. The purpose of such conduct is not to exercise the right, but to seek harm for the other party to the respective legal relationship. Similarly, Czech case law[16] considers abuse of law to be conduct which is not intended to achieve the purpose and the meaning pursued by a rule of law, but which is contrary to established good morals and is conducted with a direct intention of causing harm to another party to the legal relationship.[17]

Violation of the prohibition of abuse of rights results in the invalidity of a legal act. However, this does not address the unwanted situation completely, the stress in the workplace is created gradually, moreover, the nature of the employer's instructions is not that of a legal act. In the event of abuse of rights, the Labor Code grants the employee the right to file a complaint, to which the employer is obliged to respond without undue delay, to provide redress, to refrain from such conduct and to eliminate its consequences.

We consider it a legal error that the employee is not granted expressis verbis the right to seek adequate redress, as is the case, for example, with a breach of pre-contractual obligations. For comparison purposes – according to §41 of the Labor Code where the employer upon establishing an employment relationship shall breach the pre-contractual obligations, the natural person shall be entitled to appropriate financial compensation. The exact amount of the compensation shall be given by a court decision. Such the adjustment in relation to (tele)bullying is missing.

However, in connection with the violation of the prohibition of abuse of rights, the Labor Code further refers to a special legal regulation, which is the Anti-Discrimination Act. It implies that

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14 Due to the nature of the employment relationship, it can be concluded that the abuse of rights will occur mainly on the side of the employer, but the abuse of rights by employees cannot be ruled out, for example in the case of using the legal regulation of obstacles at work.

15 Resolution of the Supreme Court of the Slovak Republic case ref. 5M Cdo 17/2008 of 13 October 2009.

16 Judgment of the Supreme Court of the Czech Republic case ref. 31 Cdo 992/99 of 28 June 2000.

17 See also H. Barancová: Mobbing and Chicanery of the Employee as a Form of Abuse of Right. *Societa et Iurisprudentia,* vol. II., no. 2., 2014. 35–66.

protection against unfair employer conduct that caused the technostress may be also sought in this regulation.

4.2. Ad b) harassment as part of the concept of discrimination

At first glance, technostress and discrimination are not closely related, also given that in the concept of discrimination the idea of unequal treatment of persons in similar situations due to their differences, stemming from their person, personality or position, comes to mind.

According to § 2 of the Anti-Discrimination Act[18] of the Slovak Republic Adherence to the principle of equal treatment shall lay in the prohibition of discrimination on grounds of sex, religion or belief, race, nationality or ethnic origin, disability, age, sexual orientation, marital or family status, colour, language, political affiliation or other conviction, national or social origin, property, lineage or any other status or on grounds of reporting of crime or any other wrongdoing.

According to § 2a of the Anti-Discrimination Act Discrimination shall mean direct discrimination, indirect discrimination, harassment, sexual harassment; and victimisation; discrimination shall also mean an instruction to discriminate and incitement to discrimination.[19]

It means that the broader term of discrimination also includes harassment, which is defined as conduct which results in or is likely to create an intimidating, hostile, embarrassing, degrading, humiliating, abusive or offensive environment and which intends or may result in an interference with freedom or human dignity.[20] Thus, there is no direct differentiation criterion (as race, nationality or ethnic origin, disability, age etc.) in the legal definition of harassment.

Nevertheless, in practice, the question arises whether the fulfillment of this concept requires behavior towards a person with a special status or status as envisaged by the Anti-Discrimination Act in its introductory provisions or whether the prohibition of harassment, with all legal consequences, can occur against any person (employee) without examining the grounds for the infringement, which would otherwise (in the case of direct or indirect discrimination) lie in such a person and their difference. In this context, H. Barancová states that, unlike other types of discrimination, a comparison with other employees is not required in identifying harassment. The conflict with the law lies in the conduct itself, not in comparison with other types of conduct. A conduct constituting harassment will not be

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18 Act No. 365/2004 Col on Equal Treatment in Certain Areas and Protection against Discrimination, and on amending and supplementing certain other laws as amended (Antidiscrimination Act).

19 The Slovak Republic anti-discrimination legislation is adopted in accordance with the EU legislation, in particular the Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and many others.

20 Provision of § 2a of the Anti-Discrimination Act.

more acceptable if the employer insults all its employees without distinction. Therefore, we believe that harassment should be a general feature of discrimination, not only for all the above-mentioned discriminatory features, but also outside discriminatory features, where harassment would no longer constitute part of discrimination.[21] We consider the cited ideas to be fundamental, going beyond the issue of technostress and covering the complex issue of bullying in the workplace.

In the context of this paper, the adoption of this interpretation opens up a legal possibility for the employee to seek remedy in the event of abuse of rights by the employer, the employer's constant inadequate instructions, the nature of which constitutes harassment and, in particular, the right to seek adequate redress. *We believe that harassment is a legal instrument capable of providing protection against technostress and bullying. In the absence of specific legislation (regulating bullying or mobbing atc.), which would directly give the weaker party the opportunity to seek monetary compensation in the event of abuse of law or bullying, it is a matter of reasonable interpretation of existing legal rules to offer such necessary protection through already established legal institutes.*

The decision-making practice of the courts in the Slovak Republic is modest on this issue. Litigation often occurs after the bullying leads to a termination of employment. However, the alleged discrimination is only a supporting argument in these disputes and not the main object of investigation. In this respect there are interesting decisions[22] which refused to decide in favor of the employee about the invalid termination with the argument that if the employee felt that he was being bullied, he should have sought his protection at court during employment relationship under the Anti-Discrimination Act. Without a debate whether in these cases should have been decided about valid or invalid of termination, the court´s argumentation indicates the correctness of our theoretical conclusions – to seek the protection against (tele)bullying in the Anti-Discrimination Act.

4.3. Ad c) compensation for damage and compensation for non-pecuniary damage

Claiming damages due to technostress is problematic. Of course, if an employee's technostress results in the employee's deteriorated health, the employee has protection available, especially (but not only) through injury benefits, which are guaranteed by the system of social security law. However, such an approach is not sufficient, it does not ensure any significant prevention against (tele)bullying. Yet, inspiring in connection with compensation for damage and non-pecuniary damage may be the decision-making activity of the Czech general courts, which hear claims of employees for compensation for damage to mental health, alleged to have arisen in causal connection with the employer's conduct (or

21 Barancová (2014) op. cit.

22 Judgement of the Appeal Court in Nitra case ref. 5Co/40/2012 of 30 October 2012. See also Judgement of the Appeal Court in Košice case ref. 1CoPr/3/2016 of 26 October 2016.

the conduct of other employees) without explicitly linking the legal reason for the claim for damages to an accident at work.[23]

5. Conclusion

In conclusion, let us return to the initial ideas. The technology company introduces several risks to labor relations, which the company must identify and, at the same time, look for legal and non-legal means to face them. Workload and stress undoubtedly belong to such risks. Instead of reconciling family and professional life, the exact opposite happens. Employees perform work through information applications even outside standard working hours or while on vacation, holidays or non-working days, or at least respond promptly to work tasks and work correspondence.

At the same time, the ability to work under stress and constant availability are requirements that employers publicly demand, and the candidates like to subscribe to these requirements and present them as their advantage or even as their character traits. However, many times the boundary-crossing demands of employers are only half a step away from bullying. The aim of the paper was, among other things, to point out that the new-yet-old concept of technostress and bullying has several overlaps. We do not expect a fundamental change in the legislation, but we believe that in the indicated intentions, the legislator as well as (judicial) practice should pay closer attention to legal means of protection against bullying. Opening up legal possibilities in this direction will open the door to legal conduct also in favor of protection against technostress.

[23] Judgment of the Supreme Court of the Czech Republic case ref. 21 Cdo 4394/2014 of 24 March 2016.