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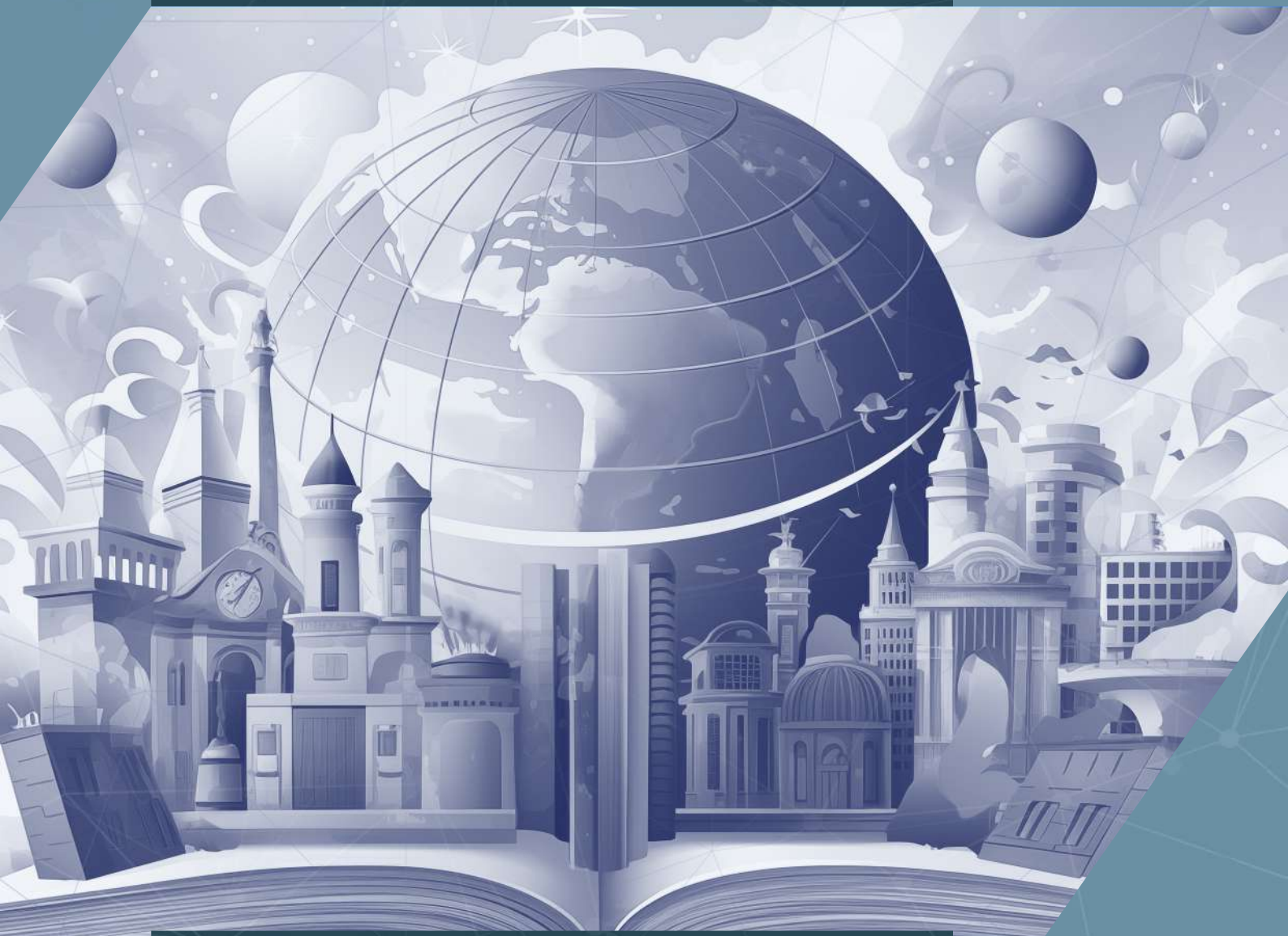

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Slovakia's departure from strong labor protection of employees as a consequence of the pandemic and the transposition of european directives

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Abstract. This scientific paper delves into the notable shift in Slovak labor law, which has departed from its historically strong emphasis on safeguarding the rights of employees, traditionally seen as the weaker party in labor relations. Until recently, this emphasis served as a substantial barrier against the globalizing and standardizing influences of employers. The paper identifies two key factors driving recent legislative "reforms" in Slovakia's labor regulation. These changes are rooted in the transposition of European labor law directives while also embracing a more liberal political perspective regarding the nature of labor relations. This shift involves moving away from rigid employee protection and adopting the concept of "increased flexibility" in employee work as a remedy for addressing the post-Covid-19 economic challenges. The previous emphasis on employee or employee representative involvement in defining working conditions, wages, and important employer decisions regarding work organization has shifted. This shift allows employers to act unilaterally, contingent on fulfilling new information obligations towards employees. However, the recent labor law reforms run counter to this historical legal tradition. Taking into account the wage levels in the Slovak Republic compared to the majority of other European Union member states, these reforms establish an unsettling level of labor law protection pro futuro of Slovak employees.

Keywords. Labor protection of the employee. Transparency and predictability of working and wage conditions. Employee representatives. Flexibility and precariousness of work.

1. Introduction

While the past three decades were relatively stable in terms of substantial labor regulation changes, the recent three years can be characterized as a significant revolution. This transformation isn't solely attributed to legislative adjustments driven by the COVID-19 pandemic but also stems from the necessary compliance with European directives. These factors have led to multiple revisions in the core labor laws of the Slovak Republic, particularly the

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Labor Code, with the most pivotal change taking effect on November 1, 2022. From a marketing perspective, we could refer to it as a revolution in both individual and collective labor relations, as it significantly disrupts the established norms governing the practical execution of individual labor relations within the Slovak labor law framework. In many instances, it introduces a new paradigm where procedural actions can be unilaterally executed, often at the expense of employee or employee representative involvement in determining the terms of employment, including working conditions and wages. In practical terms and from the employees' viewpoint, this can be characterized as predominantly unfavorable compared to the previous level of employee or representative influence on employer decisions and the nature of the employment relationship (Barancová, 2016)..

Objectively speaking, the amendment to the Labor Code with effect from 1 November 2022 (Act no. 350/2022 Coll. of October 4, 2022, which amends Act no. 311/2001 Coll. the Labor Code, as amended) is met with mixed perceptions from the standpoint of employees and employee representatives (employer union representatives tend to view it positively). On one hand, it introduces several favorable aspects, such as the introduction of the new Section 230b LC which, for the first time in the history of labor regulation, defines the right to communication for a trade union operating within the employer as a legally mandated entitlement. It also allows individuals temporarily unable to work, as per Section 77 et seq. LC, to file a lawsuit in cases of unjust termination of employment, particularly when they are objectively incapable of responding to any unilateral actions by the employer, such as termination of the employment relationship. The provision of Section 230b of LC reads: „*(1)The trade union that operates at the employer has the right to approach the employee in an appropriate manner in order to offer him union membership. The method of addressing the employee is agreed between the trade union and the employer. If an agreement is not reached, the employer is obliged to provide the employee with written information about the trade union that operates at the workplace, providing the basic data provided by the trade union to the employer, which include, in particular, the name, registered office, website address, e-mail address, profile on social networks, phone number and address of the reserved space within the employer's electronic information system, namely*

a) no later than seven days from the date of commencement of employee's employment with the employer,

b) no later than seven days from the day the employee's employment relationship was established, if the trade union started operating at the employer before the employee's employment relationship was established,

c) no later than seven days from the day when the trade union requests it due to a change in basic data,

d) once per calendar year, no later than seven days from the day the trade union requests it.

(2) A trade union operating at an employer has the right to inform employees about its activities in an appropriate manner. The method of informing employees about its activities will be agreed between the trade union and the employer. If no agreement is reached, the employer is obliged to allow the trade union to publish notices of its activities in a place accessible to employees in an appropriate manner. If employees have access to the employer's electronic information system, the obligation according to the third sentence is fulfilled if the employer reserves a space in this system for the trade union."

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Conversely, especially with regards to the content of the employment agreement and the employee's ability to negotiate working conditions and wages, as outlined in Section 43 of the Labor Code, it introduces alterations whose practical implications are likely to be predominantly adverse. These changes will not only affect the employees themselves but also undermine the effectiveness of employee representatives in carrying out their responsibilities. It's crucial to recognize that the need to align with European directives, such as the European Parliament and Council Directive (EU) 2019/1152 of June 20, 2019, concerning transparent and predictable working conditions in the European Union, and the European Parliament and Council Directive (EU) 2019/1158 of June 20, 2019, addressing the balance between work and private life of parents and caregivers, which repeals Council Directive 2010/18/EU, leads to a significantly different landscape of labor relations compared to numerous other European labor regulations. Taking into consideration that the modern Slovak labor regulation, as determined by the Labor Code since 2001 (The modern Labor Code as a basic labor regulation was only adopted in 2001 (2.7.2001) with effect from 1.4.2002, i.e. 8 years after the establishment of the independent Slovak Republic, and it combined the European approach to labor relations with maintaining a very high level of employee participation in employer's decision-making, including the creation of the content of the employment contract) has, in many labor law aspects, followed the socialist legal framework of the 1965 Labor Code (The original socialistic Labor Code no. 65/1965 Coll. with effect until March 30, 2002), particularly in the domain of substantial employee and employee representative involvement in shaping working conditions and wages, it becomes evident that the underlying principle of transparent and equitable working conditions, embedded in various new employer information obligations, represents a shift towards reducing the level of this participation. This shift can be interpreted as an attempt to enhance the current status quo in individual and collective labor relations.

The aforementioned directive, EU Directive 2019/1152, pertains to enhancing transparent and predictable working conditions, and it also addresses the improvement of working conditions within the gig economy (Barancová, 2017). However, it operates on an entirely distinct principle for establishing labor relations content within Slovak labor law, as well as in the Czech Republic and Poland, for instance. This is because it shifts away from the principle of negotiating the fundamental predefined scope of employee working conditions with a strong emphasis on employee authority. Instead, it gradually diminishes the employee's negotiating power in favor of augmenting the employer's procedural rights, as evident in the revised provisions such as Section 43 and 44 of the Labor Code, as well as the newly introduced Section 44a, Section 47a, Section 49a, etc.).

The progressive adaptation of European directives, initiated with the transposition of the Directive on transparent and predictable working conditions, has already resulted in a significant shift. This shift has disrupted the ability of parties to negotiate the existing content of labor contracts in favor of prioritizing the employer's routine information duty to employees, as outlined in the amended provisions from Section 43 onwards of the Labor Code. Art. 3 point 2 of the Directive on improving working conditions in the field of work for platforms reads: ,,*The determination of the presence of an employment relationship primarily relies on factual aspects concerning the effective execution of work, irrespective of any contractual classifications that the involved parties might have established. This assessment also considers the incorporation of algorithms in work organization for platform-based activities. In cases where, based on factual evidence, the existence of an employment relationship is ascertained,*

it is essential to distinctly identify the entity undertaking the responsibilities of an employer, as per the regulations defined within national legal frameworks." This includes compliance with the newly introduced information requirement specified in Section 47a of the Labor Code, provided that the employer has not already incorporated the substantive details from this written information into the contractual terms of the employment agreement, as part of contractual freedom (Lacko, 2015).

If we were to also take into account the draft of the upcoming directive on the improvement of working conditions in the field of work for platforms ((COM(2021) 0762 – C9-0454/2021 – 2021/0414(COD)), which in Article 3, point 2 (Art. 3 point 2 of the Directive on improving working conditions in the field of work for platforms reads: „*The determination of the presence of an employment relationship primarily relies on factual aspects concerning the effective execution of work, irrespective of any contractual classifications that the involved parties might have established. This assessment also considers the incorporation of algorithms in work organization for platform-based activities. In cases where, based on factual evidence, the existence of an employment relationship is ascertained, it is essential to distinctly identify the entity undertaking the responsibilities of an employer, as per the regulations defined within national legal frameworks*.") and Art. 4 brings even more pronounced enforcement of legal fiction as a way of determining the employment relationship between a natural person and a digital platform, regardless of how this relationship is classified in any contractual arrangements that the parties involved may have agreed upon, the situation will worsen even more significantly. In this regard, the possible transposition of the Directive, if it were to take place in the same model as the legal fiction of temporary assignment in violation of the conditions of temporary assignment according to Section 58, par. 6 and par. 7 of the LC, will even more significantly suppress the principle of free choice of employees in accordance with Art. 2 - Basic principles of LC (Labor relations according to this Act can only be established with the consent of the natural person and the employer. Section 58, par. 6 and par. 7 of the LC reads: „*(6) Temporary assignment can be agreed for a maximum of 24 months. The temporary assignment of an employee to the same host employer can be extended or renegotiated a maximum of four times within 24 months; this also applies in case of temporary assignment of an employee by another employer or another temporary employment agency to the same host employer. A renegotiated temporary assignment is an assignment by which the employee is to be temporarily assigned to the same host employer before the expiration of six months after the end of the previous temporary assignment, and if it is a temporary assignment for the reason specified in Section 48, par. 4, letters b) or c), before the expiry of four months after the end of the previous temporary assignment. The provisions of the first sentence and the second sentence do not apply to temporary assignment for the reason stated in Section 48, par. 4, letters a).*

(7) If an employee is temporarily assigned in violation of paragraph 6, first sentence or second sentence, the employment relationship between the employee and the employer or temporary employment agency is terminated and an employment relationship is established between the employee and the host employer instead. According to the first sentence, the user employer is obliged to issue a written notification to the employee about its establishment within five working days at the latest from the date of the employment relationship establishment; the employee's working conditions are adequately managed by an agreement on temporary assignment or an employment contract according to paragraph 5."

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The employer has the right to freely select employees in the required number and structure and to determine the conditions and manner of exercising this right, unless this Act, a special regulation or an international treaty to which the Slovak Republic is bound stipulates otherwise. The exercise of rights and obligations arising from labor relations must be in accordance with good morals; no one may abuse these rights and obligations to the detriment of the other participant in the employment relationship or co-employees). What we are trying to point out is the fact that the plasticity of the principle of freedom of contract (or the autonomy of the will in the broader concept of the private law principle) is starting to change fundamentally. The above-mentioned interpretations were often based on the possible premise of the existence of mandatory provisions that should ensure the balancing of the factual and legal imbalance of the subjects of labor relations and take into account the labor law protection of the employee as the weaker party to the labor law relationship (Žuľová, 2021). However, the progressive development of labor legislation at the national and European level is gradually destroying this usual mechanism not only on the side of the employee, but also on the side of the employer. The existing contractual capabilities of the employer, such as the selection of a contracting party, may encounter limitations due to the emergence of novel legal constructs. This situation could potentially give rise to the challenge of misrepresenting employment relationships as opposed to the intended commercial or civil contractual associations, all aimed at facilitating specific activities.

2. The research objectives, methodology and tools

The article deals with the more significant retreat of Slovak labour law from the strong labour law protection of employees as the weaker party of the employment relationship, which until recently formed a relatively significant barrier against the globalising and unifying influences of employers. The emphasis on the participation and interference of the employee or employee representatives in the creation of the working and wage conditions of employees or in the adoption of key decisions by the employer on the organisation of the work process is being replaced by the possibility for the employer to act unilaterally as a result of the sufficiency of the various new information obligations towards the employee. Probably the most significant intervention into the contractual freedom of the subjects of the employment relationship is the narrowing of the content of the employment contract under Section 42 of the Labour Code and its transformation into the newly drafted Section 47a of the Labour Code, under which the employer may act independently in the form of fulfilling its information obligation towards the employees. Based on the analysis of the legal regulation and own application practice, the scientific article tries to analyse the areas of weakening of the employees' contractual right. Qualitative methods were used in the thesis, with an emphasis on techniques used in legal science, including content analysis, namely document and data analysis, description, induction and deduction.

3. Fulfillment of information obligations as a substitute for participation and interference of employees

The aforementioned substantial amendment to the Labor Code, taking effect from November 1, 2022, is likely to have exerted the most profound influence within the realm of the contractual framework governing labor relations. This impact is most discernible in the substantial reduction of the obligatory elements contained within employment contracts. Consequently, employers' inclination to engage in negotiations pertaining to these contractual

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components, both in individual employment contracts with employees and in collective agreements with trade unions, is automatically curtailed. Hence, one might even use a somewhat derogatory term to describe this amendment, characterizing it as a triumph of formalistic adherence to information obligations, at the expense of the extent of involvement and participation of employees and their representatives in the negotiation of employment terms and wages within both individual and collective labor relations. A more significant alteration within the contractual framework comes in the form of the introduction of fresh information responsibilities for employers, as exemplified in Sections 47a and 49a of the Labor Code. These obligations, to some degree, supersede the previously negotiated content within employment contracts, bolstering the employer's capacity for independent action, notwithstanding the hitherto established concept of collaborative decision-making with trade union entities in matters concerning the employer.

Hence, there is a pressing need to meticulously consider the future establishment of a suitable legal-theoretical framework for executing mutual legal actions concerning the integration of internal company regulations as the legal foundation for fulfilling unilateral informational obligations introduced by the amendment to the Labor Code in the previously mentioned Sections 47a LC and Section 49b LC. Provision Section 47a LC reads: ,,*(1) The employer is obliged to provide the employee with written information about his working conditions and terms of employment at least to the extent of the following data, if the employment contract does not contain them:*

a) the method of determining the place of performance of work or the determination of the main place of performance of work, if several places of performance of work are agreed upon in the employment contract,

b) weekly working hours, information on the method and rules for scheduling working hours, including expected working days and compensation period according to Section 86, Section 87 and 87a, the scope and time of the provision of a break at work, continuous daily rest and continuous rest during the week, rules on overtime, including a wage benefit for overtime work,

c) amount of leave or method of determining it,

d) pay date and payment,

e) the rules for termination of employment, the length of the notice period or the method of determining it, if it is not known at the time of providing the information, the deadline for filing a lawsuit to determine the invalidity of the termination of employment,

f) the right to professional training provided by the employer, if provided, and its scope.

(2) The employer shall provide the employee with information pursuant to paragraph 1

a) within seven days from the commencement of the employment relationship, if it concerns data according to paragraph 1, letter a), b) and d),

b) within four weeks from the commencement of the employment relationship, if it concerns data according to paragraph 1, letter c), e) and f).

(3) If the expected duration of the employment relationship is shorter than the period according to paragraph 2, the employer shall provide the employee with the information according to paragraph 1 before the end of the employment relationship at the latest.

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(4) The employer may provide the data pursuant to paragraph 1 in the form of a reference to the relevant provision of this Act or special regulation or to the relevant provision of the collective agreement.

(5) If the working conditions and employment conditions are governed by a collective agreement, the written information according to paragraph 1 also includes the designation of the relevant collective agreement and its contractual parties."

Provision Section 49b LC reads: *„(1) In cases where an employee holds a fixed-term or short-term employment contract, lasting over six months and with the conclusion of any applicable trial period, if mutually agreed upon, the employer must furnish a written and reasoned response within one month of the application's submission, should the employee request a switch to an indefinite-term contract or a shift to a predefined weekly working duration. This rule also extends to any subsequent employee requests, submitted no sooner than 12 months following the previous one. However, for employers who are natural persons or those employing fewer than 50 workers, the response deadline extends to three months from the application date. In instances of repeated requests, if the rationale for the response remains unaltered, an oral response is admissible.*

(2) For the purposes of paragraph 1, the duration of the previous employment relationship is included in the duration of the short-term employment contract, if it is a renegotiated short-term employment contract."

Moreover, it is crucial to evaluate their implications on the content, utilizing contract law within labor relations (such as the code of conduct, ethical code, guidelines for reporting anti-social behavior, personal data protection principles, conditions governing employee assignments to foreign countries, work standardization, and instructions for anti-terrorism background checks on employees). In most instances, the contractual framework predominantly operates through the participatory rights of employee representatives, spanning from the adoption of fundamental labor law internal regulations, in the form of working regulations, to the formulation of internal directives, and the autonomous discharge of the employer's informational and notification responsibilities in areas like scheduling working hours, as per Section 90, par. 4 LC and Section 90, par. 9 LC, among others. The present status quo regarding the development and substance of internal company regulations is marked by descriptors like legal ambiguity, diversity, and procedural inconsistency in the conduct of employers, employee representatives, or the employees themselves. This stems from the fact that the Slovak legal framework neither governs the formulation of internal company regulations nor delves into the prerequisites for their issuance, including the absence of a framework outlining the admissible content of these internal company regulations. The Labor Code solely addresses procedural aspects concerning the establishment of two categories of internal company regulations: work regulations and regulations ensuring occupational health and safety. However, this coverage pertains solely to the processes of their endorsement while exercising the participation rights of employee representatives. Consequently, employers independently establish guidelines concerning the initiation, substance, validity, and efficacy of internal company regulations, often without considering the potential analogous application of generically binding legal statutes. This varying 'professional' approach to crafting internal company regulations frequently results in the dilution of employees' social norms. Furthermore, it can render specific ex lege provisions invalid and have adverse repercussions for the employer, such as labor

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disputes, encroachment upon the employer's legitimate interests, damage to reputation, unauthorized competitive advantages, and more (Barancová, 2019).

As a result of the directive on transparent and predictable working conditions, which mandates implementation by November 1, 2022, it will be imperative to make necessary adaptations to the existing internal company documentation. This will stem directly from the newly conceived provisions addressing the employer's information obligations when initiating an employment relationship or assigning employees to work in another country. Consequently, in the future, it will be essential to either introduce, directly establish, or amend various new labor law components within the company's internal regulations. These may include the electronic dissemination of information to employees, the adoption of multiple new written (notification) responsibilities for the employer, revisions to the content of contractual documentation related to employment relationship creation, and the incorporation of guidelines regarding the involvement of employee representatives. Furthermore, the incorporation of timeframes for fulfilling specific obligations in labor relations or exercising related rights, such as the adjustment of employee grievances with the employer or transitions to alternative employment arrangements, may also be deemed necessary. The various entities involved in labor relations will need to proactively address the array of challenges previously outlined. This entails a substantial shift in the approach to contracting, whereby numerous elements that were previously subject to negotiation will now fall under the purview of the employer's unilateral information obligation, provided this course of action is chosen. Consequently, this shift will necessitate a reevaluation of essential components within labor or collective agreements, alongside other agreements involving parties in labor relations. In the context described, our objective is to examine the ramifications of this transposition on the substance of the contractual framework, both in labor law and civil law dimensions. This involves identifying potential adverse effects on the legal safeguarding of employees in terms of their ability to participate in the negotiation of their own terms and conditions of employment. Moreover, we will explore how this transposition may impact the practical implementation of the contractual system in interactions between employers and employee representatives (Švec & Toman, 2023).

One of the most substantial interventions affecting the contractual autonomy of parties in an employment relationship involves the restriction of the employment contract's content as outlined in Section 42 of the Labor Code (LC). This transformation takes the form of the newly introduced Section 47a of the LC, granting employers autonomy in fulfilling their information obligations towards employees. Until the LC amendment took effect, the traditional model characterized the employment contract as a mutual legal agreement in accordance with Section 42 of the LC, requiring signatures from both the employer and the employee. Essentially, the employment contract served as a written agreement representing the consensus of both contracting parties. It outlined essential terms stemming from Section 43, par. 2 of the LC, such as the nature of work and a concise description thereof, the work location, the commencement date, and remuneration conditions, unless these were specified within a collective agreement. As per the wording of Section 43, paragraph 2, of the Labor Code (LC), it becomes evident that the employment contract may encompass a broader array of supplementary information that holds significant value for employees within a specific organization. For instance, details such as payment schedules, working hours, and vacation allocations can be included. Drawing from this overarching definition and the associated legal interpretation of the employment contract's

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content, it was feasible to categorize the contract's content into three fundamental elements. These were essentially established by Section 43, paragraph 1 (In the employment contract, the employer is obliged to agree with the employee on the essential elements, which are the type of work for which the employee is hired and its brief description; place of performance of work (municipality, part of a municipality or other designated place); day of starting work and wage conditions, if they are not agreed in the collective agreement), regularly defined in Section 43, par. 2 LC (The employer shall specify in the employment contract, in addition to the requisites according to paragraph 1, other working conditions, namely pay dates, working hours, vacation amount and length of notice period) and randomly defined in Section 43 par. 4 LC (Other conditions that the participants are interested in, especially other material benefits, can be agreed upon in the employment contract). However, the amendment disrupts this traditional model, aiming to enhance transparency and predictability in employee working conditions. This is achieved through the introduction of a novel employer information obligation under Section 47a of the LC. An impartial assessment of this alteration underscores the challenging position in which the Slovak legislator found itself, largely due to the comprehensive labor law protection afforded to employees in the framework of Slovak labor law, an inheritance from the previous socialist-era labor law regulation. When comparing Slovak labor legislation with that of other countries, it becomes evident that there exists a notably high level of involvement by employee representatives and individual employees in influencing the employer's decision-making during negotiations regarding the terms and conditions of employment. An illustrative instance of this is the aforementioned content of employment contracts in effect until November 1, 2022. Another example is the extensive participation of employee representatives, such as their influence on the scheduling of work hours by the employer in accordance with Section 90, paragraph 4, of the Labor Code (LC) (Other conditions that the participants are interested in, especially other material benefits, can be agreed upon in the employment contract) or their direct participation in the negotiation of wage terms for employees. The latter is strictly stipulated by Section 43, paragraph 1, letter d), and Section 119, paragraph 2, of the LC primarily occurring within the framework of labor or collective agreements (The provision of Section 119 par. 2 LC reads: „*Wage conditions shall be agreed by the employer and the competent trade union body in a collective agreement, or with the employee in the employment contract. For members of cooperatives in which employment relations are a condition of membership according to its statutes, wage conditions may be arranged by resolution of a members meeting").* Notably, unlike some other countries like the Czech Republic, the Slovak labor legislation does not permit the unilateral establishment of employee wage conditions through internal company regulations (Rak & Čiefová, 2021).

The amendment to the Labor Code (LC) significantly departs from this established framework, introducing the potential for independent and adaptable actions on the part of the employer. As articulated in Section 47a, paragraph 1, of the LC, the employer possesses the explicit prerogative to determine whether to adhere to the prevailing model of incorporating the terms and compensation of employees into a labor or collective agreement. Alternatively, the employer may opt not to engage in negotiations concerning these aspects of employee work conditions. In such cases, the employer's ensuing responsibility lies in fulfilling an information obligation, where they are mandated to convey any alterations or changes to these conditions. Consequently, even though the employment relationship retains its essence as a private legal arrangement with equal standing for both parties involved, the modification in Section 47a of the LC indirectly adjusts the equilibrium between employee and employer, tilting the scales in

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favor of the employer. This amendment affords the employer the choice to abstain from negotiations on specific work conditions (a prerogative previously unavailable) and, in essence, allows for the selection of the extent to which employees are engaged in the decision-making process. It is understandable that employers are likely to opt for independent action, even if this entails fulfilling the information obligation toward employees, and these working conditions do not align with the customary negotiations within the employee's employment contract or within the collective agreement with employee representatives. Conversely, labor unions will be fervently committed to safeguarding the collective agreement's substance, seeking to prevent its reduction primarily to wage negotiations or the modification of the roles of employee representatives across various labor law domains (Švec & Toman, 2019).

However, such a decision by the employer will unquestionably encompass considerations related to the established framework governing labor relations within the internal domain of the employer. It is comprehensible that as long as the employer has entered into either a collective agreement or employment contracts with employees, immediate unilateral alterations due to the new labor legislation would be improbable, given the requisite consent from the other party involved. Nonetheless, even while contemplating the implementation of a fresh model under the LC amendment, the employer must remain mindful of the imperative to uphold the principles of equal treatment and the prohibition of discrimination. For instance, should the decision be made to modify the contents of an employment contract in favor of autonomous fulfillment of information obligations for a newly hired employee, it would give rise to a dual legal framework governing negotiated working and wage conditions. One faction of employees would have these working conditions stipulated within their employment contracts, while the other group could unilaterally modify them, citing the provisions of Section 54c LC (the employer is obliged to change the working conditions and employment conditions specified in Section 47a par. 1 and when changing the data specified in Section 44a par. 2 and Section 54b par. 2 provide the employee with written information about the changed working conditions and terms of employment and about the changed data no later than the day the change takes effect; this does not apply if the change encompasses a change in a legal regulation or a collective agreement to which the written information refers) with the obligation to duly notify the employee of this change, which must occur no later than the effective date of such modification. With a flexible approach towards later defining working conditions, for which the employer is obliged to furnish written information, he could theoretically alter these specific working conditions on a monthly basis without substantial constraints (e.g., shifting the payment date). In this regard, the employer should thus bear in mind that a potential unilateral modification of working conditions for one group of employees is likely to constitute a breach of the principle of equal treatment when compared to the aforementioned other group of employees, who have their working conditions delineated within their employment contracts and are in a comparable situation with these employees. The very duality of such legal frameworks for adjusting working conditions will likely present more challenges than advantages to the employer. Not to mention that the more substantial the intervention he introduces in the content of employment contracts, the greater the pressure from employee representatives, if they are present, to negotiate these working conditions within a collective agreement (Žuľová & Kundrát, 2020).

The implementation of the mentioned information obligation can be carried out in written form, while the written form is respected if the employer also provides this information

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in electronic form to those employees who meet the stated material legal conditions for electronic delivery of information according to Section 38a LC. Provision Section 38a LC reads: „*The employer is obligated to furnish the employee with information that, in accordance with this Act or any other labor law regulation, is typically provided in written or documentary form. The employer may opt to provide this information electronically, provided the employee has access, can save and print it. The employer is required to maintain a record of sending or receiving the document unless specified otherwise by this law or any special regulation. The same rules apply to the employer's written responses when an obligation exists to respond in writing.*"

From a substantive standpoint regarding the intervention in the content of the employment contract, following the adoption of the LC amendment, the notion of mandatory specification of crucial elements in the employment contract, as per Section 43, paragraph 1, letters a)–d) LC under the initial legislation until November 1, 2022, remains unchanged. Simultaneously, there has been an expansion of the potential for negotiating the place of work. For the first time, the LC has acknowledged the option of not reaching an agreement on the specific workplace for the employee but rather agreeing solely on the principle that the employee will determine the place of work. This adjustment is understandably advantageous for highly flexible job positions where the nature of the work is not tied to a specific location, allowing the work to be carried out from any place or multiple locations, with the employee having the flexibility to schedule the execution of work duties in real time. However, this consequently implies the exclusion of certain elements, such as organizing business trips or providing travel reimbursements, unless there is explicit agreement on a form of notification or other obligations of the employee. Such agreement would serve as the basis for the employer's entitlement to change the designated workplace or summon the employee to the company's headquarters or another specified location for work. The Labor Code explicitly uses the term "rule" rather than requiring an agreement on a specific geographically defined place of work. Following this, it is at the discretion of the employer and employee to negotiate a high level of flexibility. The aforementioned essential requirements in the employee's contract are followed by a newly constructed provision addressing the "other content" of the employment contract. This provision essentially encompasses the prior concept of negotiating regular and irregular working conditions, reflecting the private law nature of defining employment contract content. Simultaneously, with the increased individual autonomy of the contracting parties, Section 44, paragraph 2 of the Labor Code (LC) (Provisions of Section 44, par. 2 reads: „*(2)The provisions of the employment contract or other agreement between the employer and the employee are invalid,*

a) by which the employee undertakes to maintain confidentiality about his working conditions, including wage conditions and employment conditions,

b) which prohibit the employee from performing other gainful activities outside the working hours specified by the employer; this does not affect the limitation of other gainful activity according to Section 83 or according to special regulations) establishes limits on this freedom of contract. It provides a negative specification of the provisions wherein an agreement on such LC terms would be deemed invalid due to an excessively broad extension of the employer's discretionary authority. This pertains specifically to areas such as restricting the employee's right to discuss the content of their working and wage conditions with third parties, as well as limiting the employee's ability to engage in work for another employer. This holds

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true unless the violation of the prohibition of competitive activity under Section 83 LC („*An employee can perform alongside his/her employment another earning activity that has the character of competition with his/her employer's activity only with the prior written consent of the employer. If the employer does not respond within 15 days of delivery of the employee's request, the employer shall be deemed to have granted consent*.") and 83a LC *(„(1) The employer and the employee may agree in the employment contract that the employee will not, for a certain period of time, no longer than one year, perform a gainful activity that is competitive with the subject of the employer's activity after the end of the employment relationship. ..... (4) The employer shall provide the employee with adequate monetary compensation in the amount of at least 50% of the employee's average monthly earnings for each month of fulfilling the obligation according to paragraph 1. The monetary compensation is due on the payment date determined by the employer for the payment of wages, namely for the previous monthly period, if did not agree otherwise.*") is not breached during or after the termination of the employment relationship. In this context, it is important to recognize that, despite the new provision in Section 44, paragraph 2, letters b) of the Labor Code (LC), which deems provisions of the employment contract or agreement *"prohibiting the employee from performing other gainful activities outside the working hours specified by the employer"* as invalid, this does not rule out a similar restriction imposed by the employer on the employee. This could be in connection with the prohibition of actions contrary to the employer's legitimate interests under Section 81, letter e) LC, such as qualifications or work skills acquired by the employee at the current employer. In such cases, it would not be a restriction of competitive activity but the utilization of knowledge specific and unique to the employer, possibly constituting part of the employer's know-how or trade secret under Section 17 of the Civil Code (CC).

Therefore, if the employer decides not to agree on a certain scope of the employees' working conditions in the employment contract, he is obligated to inform the employee about their existence and their wording within the specified time limits according to Section 47a par. 2 LC. If the expected duration of the employment relationship is shorter than the period in terms of the deadlines listed below, the employer will provide the employee with the information in question before the end of the employment relationship at the latest. Based on the different relevance of working conditions for adjusting the content of the employee's employment relationship, the deadlines for fulfilling the information obligation by the employer are also set differently:

- *within seven days from the beginning of the employment relationship*

the employer is obliged to inform the employee about the method of determining the place of work performance or determine the main place of work performance, if several places of work performance are agreed upon in the employment contract; on the established weekly working time, data on the method of scheduling working time and the rules for its scheduling, including the expected working days and compensation period according to Section 86, Section 87 and 87a, the scope and time of breaks at work, continuous daily rest and continuous rest in the week, rules regarding overtime work, including a wage benefit for overtime work; salary due dates and salary payments, including the payment date;

- *within four weeks from the beginning of the employment relationship*

the employer is obliged to inform the employee about the amount of leave or the method of determining the leave; about the rules for the termination of the employment

relationship, the length of the notice period or the method of determining it, if at the time of providing the information, the deadline for filing a lawsuit to determine the invalidity of the termination of the employment relationship is not known; on the right to professional training provided by the employer, if provided, and its scope.

Included in the employer's new obligations regarding information about working conditions or directly linked to the agreement on employment contract content is the duty to respond to the employee, indicating whether they can work for the established weekly hours or indefinitely. This obligation aligns with the transposition of Article 12 of EU Directive 2019/1152, addressing the transition to another form of employment, as reflected in the new Section 49b of the Labor Code (LC). While the European emphasis on predictability in improving working conditions through transitioning to a standard form of employment is understandable, in practical terms, the new legal regulation may pose more of an administrative burden for employers than an advantage for employees. It is essential to consider Article 2 of the fundamental principles of the LC, where the employer is granted the right to select specific employees and determine the form and conditions of their employment, influencing the nature of the employment contracts offered. The introduction of the new employee right to inquire will not impact whether the employer offers them such a "standard" contract or not. Conversely, restricting the submission of an application to once every 12 months does not address the situation for employers with a substantial workforce. Responding to a significant number of employee requests may lead to a formalization of prepared responses and potentially a change of recipient, rather than a substantive adjustment of the written reply. Although Section 49b of the Labor Code mandates the employer to provide a "reasoned" response, it lacks an explicit, objective definition, leaving it to the employer's discretion to determine the form of the response. It can be anticipated that this may involve references to potential increased costs, the necessity for flexibility in human resources management, and similar factors, with employees having limited scope to contest such responses.

4. Conclusion

Assessing recent alterations in labor law regulation in the Slovak Republic, we can aptly characterize these as a departure from the traditionally robust labor law protection. In the course of these legislative changes, the purported increase in decision-making flexibility within the employment relationship predominantly favors employers, compromising the legal and job security of employees. Shifts in the extent of employee involvement in shaping the employment relationship scheduling unmistakably result in a deterioration of the established working and wage conditions for employees.

Nevertheless, the adverse effects of the amendment to the LC in the realm of individual labor relations can also be perceived as a certain opportunity for enhancing the efficacy of employee representation and the exercise of employee participation rights. The conditions that contribute to an increase in the employer's decision-making flexibility simultaneously pose a challenge to the activities of trade unions. For instance, the stipulated condition of justifiability for serious operational reasons provides employee representatives ample scope to exert influence, with reasons being defined only after reaching an agreement with employee representatives. Considering the employee's right to contest the employer's actions (the right to complain) and the employer's obligation to provide a reasoned response to the complaint, or to engage in a comprehensive discussion of the entire case with the employee representative, the

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amended LC can be seen as creating a space and incentive to enhance the effectiveness of representing employees' interests and underscore the significance of the work of employee representatives in the workplace.

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