Effective involvement of trade unions in collective bargaining to eliminate the negative effects of the economic crisis on social peace

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Prague 2024

The study was prepared within the ASO project "Risks of the impact of the economic crisis on social peace from the perspective of employees critical points and possible solutions in the framework of collective bargaining" (contribution to the activity pursuant to Section 320(a) of the Act No. 262/2006 Sb., the Labour Code, as amended, to promote social dialogue).

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1. Introduction: study content and main objectives

The domestic and foreign labour market has recently been affected by a number of factors with a potentially significant impact on social peace and the functioning of labour relations between employees and employers. For example, the economic crisis or the ongoing war conflict in Ukraine, associated with the influx of refugees and other directly or indirectly related phenomena, including the rise in energy prices and high inflation, which devalue employee earnings and intensify the tendency of employers to seek savings also in the area of personnel and operating costs. Also crucial is the dynamic development of technology, which threatens the employability of certain groups of workers and affects the shape of relationships formed in the workplace, or the still lingering effects of the COVID-19 pandemic, which has significantly affected the entire economy, affected labour market processes and had a major impact on the content of existing employment relationships.

The above-mentioned phenomena can lead to a significant destabilisation of workplace relations, especially if employers react by taking measures that negatively affect larger groups of employees - for example, the following. This may include organisational changes leading to mass redundancies or fundamental changes in the nature of the work carried out, austerity measures in the field of remuneration such as freezing wage increases or even reducing them, or a move towards the use of flexible forms of employment offering a higher degree of autonomy but also a lower level of protection for the employee (teleworking, agency work, relationships based on performance or employment contracts, etc.).

Consideration must also be given to the numerous adopted and forthcoming changes to labour law regulation with a potential negative impact on the legal status of employees. In this respect, we can first of all point to the planned abolition of the guaranteed wage for employees in the payroll sector or the (so far, fortunately, only discussed) introduction of the employer's right to terminate the employment relationship by giving notice without giving a reason.

All of this indicates the scale of the recent challenges faced not only by workers themselves but also by their collective representatives, led by trade unions, which, in their efforts to preserve social reconciliation, ensure adequate working conditions and protect workers' rights, often have to make much greater efforts than they have done in the past, which in many cases they are not equipped to do in terms of personnel, funding or other means. It is also necessary to take into account the considerable dynamism and opacity of the development of relevant circumstances (in the field of applied technologies, legal regulation, etc.), which increases the level of knowledge and skills required for quality employee representation.

The aim of the study is to analyse the attitudes of employees resulting from the available surveys, to identify and analyse selected areas of legislation that are important in the context of the impact of the economic crisis on labour relations, and then, based on the analysis, to formulate recommendations for the involvement of trade unions and measures within collective bargaining that can eliminate or mitigate the negative impacts and contribute to the preservation of social reconciliation.

The study is thematically focused on three areas, i.e. on the issue of termination of employment in connection with organisational changes adopted by the employer, on the matter of fair remuneration of employees and on the application of flexible forms of employment, especially telework. Recent developments in legislation, both at the domestic level and at the level of the European Union, are also taken into account.

The first part of the study deals with the issue of termination of employment for organisational reasons on the part of employers and other related issues such as collective redundancies and severance pay. The introductory passage is followed by an analysis of the results of available surveys among employees, which confirm the importance of the issue of termination of employment and employment protection (job retention) in terms of targeting trade union activity. An analysis of the relevant legislation contained in particular in Act No. 262/2006 Sb., the Labour

Code, as amended (hereinafter referred to as the "Labour Code") is presented. Attention is paid to the regulation of the application of organisational reasons for termination of employment (in particular the closure of the employer or part of it and the redundancy of the employee), collective redundancies, the provision of severance pay or the participation of the trade union - for example, the negotiation of a notice of termination of employment addressed to the employee. On the basis of the analysis, recommendations are then formulated for trade union involvement, e.g. in terms of influencing employers' practices in selecting redundant employees for dismissal or in the field of severance pay.

The second part of the thesis focuses on a matter that is often very problematic in the context of the economic crisis and the ensuing austerity measures of employers, i.e. ensuring fair remuneration of employees. After an introductory explanation, which emphasises the importance of the issue (also with regard to the development of legislation in the Czech Republic and the European Union), there follows an analysis of the results of employee surveys, which show how sensitive the area of remuneration is from the perspective of employees, and at the same time illustrate that the combination of high inflation and relatively low wage growth has led to a fall in real wages in the Czech Republic in recent years. The next passage of the text is devoted to an analysis of the key aspects of the legislation related to the material under discussion. First, the constitutional and international law foundations of the regulation of fair remuneration are presented, followed by an analysis of the legal regulation of remuneration and its expected development in the coming period, especially in the areas of rules for determining the amount of wages, protection of the non-negotiable amount of wages (minimum and guaranteed wages) and ensuring equal treatment in the remuneration of employees. The forthcoming changes to the legislation are also analysed from the perspective of the requirements of the relevant EU directives. The last part of the chapter is devoted to the involvement of trade unions, as well as recommendations and challenges for collective bargaining, e.g. in the

context of the possible abolition of the guaranteed wage or the participation of trade unions in the design of employers' remuneration systems.

The third part is devoted to flexible forms of employment, whose application can also be seen as a cost-reducing measure for employers and as a means of increasing the efficiency of employees in the context of the topic of the study. Taking into account the results of available surveys, the analysis focuses in particular on the institution of teleworking, primarily from the perspective of the risks associated with this way of organizing the work process on the part of employees. The introductory part of the thesis is devoted to the introduction of flexible forms of employment and the basics of their regulation at the level of the Czech Republic and the European Union, including recent developments. The results of available employee surveys are also discussed, showing, among other things, the importance of the issue as a desired collective bargaining priority and the popularity of mobile working (teleworking). This is followed by an analysis of the relevant parts of the telework legislation, taking into account the changes introduced in 2023, from which the recommendations for collective bargaining are then formulated, particularly in the areas of introducing telework, preventing overworking of employees and ensuring reimbursement of expenses incurred by employees in connection with the performance of their work.

2. Termination of employment (employment protection)

As mentioned above, the situation on the Czech labour market is currently affected by a number of factors that are also related to the economic crisis and that are manifested, among other things, by increased efforts by some employers to reduce their workforce. Recently, employers have also resorted to mass redundancies quite often - for example, in March 2024 alone, 24 employers reported mass redundancies to the regional branches of the Labour Office, according to the information provided by them, involving a total of 772 employees[1].

It is also necessary to mention and reflect on the development of the legal regulation of termination of employment in the Labour Code, which is currently facing pressures to reduce the level of legal protection of employees and increase the flexibility of the regulation (especially on the side of employers). Concrete solutions have already been presented in the framework of the draft "Flexible amendment of the Labour Code", which was prepared by the Ministry of Labour and Social Affairs and at the time of this study was at the stage of completion of the comment procedure (hereinafter referred to as the draft "Flexible amendment of the Labour Code")[2]. The proposal aims, for example, to change the rules for calculating the notice period (generally to shorten it), to introduce shorter notice periods for certain termination grounds or to extend the time limits for termination of the employment relationship in the event of breach of obligations by the employee. The introduction of the employer's right to terminate an employee's employment relationship by giving notice without giving reasons is also widely discussed, which has not yet appeared in the proposal of the flexible amendment of the Labour Code, but it is possible that it will happen (e.g. through a parliamentary amendment), which, if

[1] Viz AKTUALNE.CZ. *Hromadné propouštění nahlásilo v březnu 24 firem*. [online]. 2024. https://zpravy.aktualne.cz/ekonomika/hromadne-propousteni-chysta-25-firem-nejvice-cd-cargo/r~75902e84c08d11e39d320025900fea04/.

[2] Viz ÚŘAD VLÁDY ČŘ. Veřejná část elektronické knihovny připravované legislativy. Návrh zákona, kterým se mění zákoník práce a některé další zákony. Č.j. předkladatele MPSV-2024/78761-521/2. Verze do připomínkového řízení. Dostupné z: https://odok.cz/portal/veklep/material/KORND4SE8J9L/.

approved, would lead to a substantial reduction in the level of employment stability protection.

The great importance of the issue of redundancies and employee protection in this area in terms of the desired priorities for trade union activity among employers is also confirmed by the results of a survey conducted by Trexima company. In the following subsection of this part of the study, we will therefore focus on the results of this survey and their interpretation.

Subsequently, an analysis of the current legal regulation of termination of employment in the Labour Code will be carried out, with a primary focus on the areas relevant to the study's task - the application of organisational reasons for termination, collective redundancies, severance pay and the involvement of trade unions in the process of termination of employment (negotiation and co-decision, etc.).

The final part of this subchapter will be devoted to presenting possible concrete procedures by which trade unions can contribute to the protection of employees from dismissal in light of the impact of the economic crisis, or at least to "cultivate" employers' practices in this field or to mitigate the economic impact of termination of employment on employees.

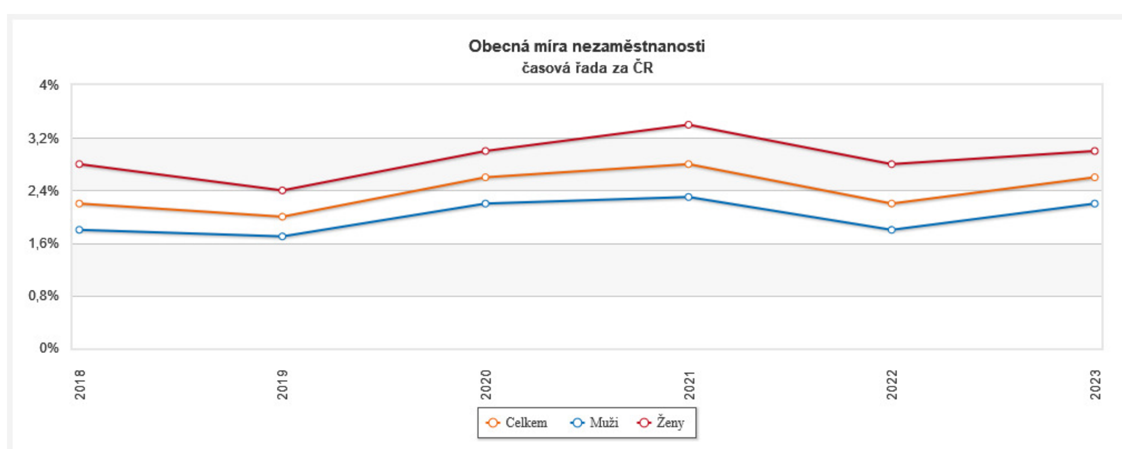
2.1. Survey results - collective bargaining in times of economic stagnation

The survey in question, entitled "*Collective bargaining in times of economic stagnation and rising unemployment*"[3], carried out by Trexima in 2022, is based on a questionnaire survey of employees and focuses, among other things, on the area of "employment protection (job retention)".

[3] Celý průzkum dostupný z: https://www.asocr.cz/obsah/67/aso-v%C2%A0roce-2022-realizovala-projekt-pod%C2%A0nazvem-podpora-och/330665.

Although the survey did not ask employees to identify specific priorities for social dialogue and collective bargaining in the area of protection against termination of employment, it shows that employees generally rank employment protection as one of the most important areas addressed in collective bargaining - for the vast majority of employees surveyed (80%) this area of action is very important, and for a further 14% it is rather important. Only 6% of respondents said it was a topic of some or very little importance.

Thus, despite the long-term low general unemployment rate in the Czech Republic (see chart below), it appears that most employees are very sensitive to the risk of losing their jobs.



General unemployment rate
Time series for the Czech Republic
Total
Men
Women

(Source: Czech Statistical Office)

The high prioritisation of trade union action in the field of employment protection is also linked to the results of another survey conducted by Trexima in 2023[4], according to which up to 56% of the employees surveyed

[4] Viz TREXIMA. Průzkum *Důstojná práce z pohledu zaměstnanců ČR a role odborových organizací při její realizaci*. 2023. Dostupný z: https://www.asocr.cz/obsah/66/informace-k-projektu-aso-budoucnost-kolektivniho-vyjednavani/333406.

strongly or rather agreed with the statement that they and their family would be in financial trouble almost immediately if they lost their jobs. The loss of employment would therefore mean major financial difficulties for a large group of employees, e.g. in meeting living costs, financial obligations, etc., which is also reflected in the views expressed about the importance of the employment protection agenda.

In terms of satisfaction with the results of collective bargaining in this area, it is in the majority among employees surveyed in the 2022 survey mentioned above, with 52% of respondents being somewhat satisfied and 13% very satisfied. The remaining 35% of respondents are dissatisfied, and 5% very dissatisfied, indicating possible room for improvement.

To conclude this section, it can be reiterated that employment protection is an area of trade union activity that is generally highly emphasised by the employees surveyed, while at the same time they are mostly satisfied with collective bargaining in this area. At the same time, however, individual respondents may conceive of the term 'employment protection' as representing a wide (and often different) range of different activities and practices, ranging from trade union involvement in dealing with the employer's economic and financial situation or structural changes planned by the employer, to protection provided in specific cases of employee termination. The following text will focus mainly on the latter direction.

2.2. Adjustment of the termination of employment in the light of the effects of the economic crisis

In the field of dismissal of employees, it is particularly important to present the main points of the legal regulation of the application of relevant termination grounds related to organisational changes on the employer's side, as well as the regulation of related issues such as collective dismissal, severance pay, protection of trade union officials, negotiation of termination of employment with the trade union, etc.

2.2.1. Application of organisational grounds for dismissal - closure of part of the employer, relocation of the employer and redundancy of the employee

The effects of the economic crisis are usually manifested by employers also adopting various ("small" or "large") organizational changes, which, according to the commentary literature, are generally considered to be any decisions or measures "*concerning the organizational structure of the employer, the structure and number of jobs, or the methods, methods and processes of work organization",* which usually have an impact on the organizational structure of the employer[5] - e.g. abolishing, merging or splitting jobs, relocating or abolishing entire organisational units of the employer (departments, branches, etc.) or changing their tasks or staffing.

Depending on the nature of the organisational change and its consequences, the employer may use this as one of the grounds for termination set out in Section 52(a), (b) and (c) of the Labour Code:

- the dissolution of the employer or part of the employer [para. a)],
- the relocation of the employer or part of the employer [para. b)],
- the redundancy of an employee due to a decision of the employer or the competent authority to change his tasks, technical equipment, to reduce the number of employees in order to increase the efficiency of work or to make other organisational changes [para. c)].

As a matter of principle, the acceptance of organisational changes and the subsequent decision to dismiss employees is the responsibility of the employer, which, according to case law, is *"allowed* by law to *regulate the number of its employees and their qualification composition so as to*

[5] Viz STRÁNSKÝ, J., Komentář k § 52 zákoníku práce. In: STRÁNSKÝ, J. a kol. *Zákoník práce s podrobným praktickým výkladem pro širokou veřejnost*. Praha: SONDY 2021, s. 189.

employ only such number of employees and in such qualification composition as corresponds to its needs."[6] It is therefore true that the organisation of the employer's activities and structure is part of its managerial autonomy. Nevertheless, the rules on trade union participation are already applied in the decision-making phase for the adoption of organisational changes.

Specifically, pursuant to Section 287(2) in conjunction with Section 280 of the Labour Code, an employer with 10 or more employees is also obliged to discuss (in advance) with the trade union the employer's intended structural changes, rationalisation or organisational measures and measures affecting employment, in particular measures in connection with collective redundancies pursuant to Section 62 of the Labour Code (see below).

The process of adopting an organisational change and its implementation is not expressly regulated in the legislation, and in accordance with the case law of the Supreme Court, it is applicable that an organisational change is not perceived as a legal act of the employer, but as a condition for the existence of a termination ground in the form of a so-called de facto act, which is not subject to the grounds of apparent invalidity or nullity.

Thus, in assessing the validity of the notice given to the employee, the court can only examine whether the organisational change was actually adopted, including whether the person or body authorised to make the change decided to do so[7]. The person who is authorised to perform the actual acts is the person who can perform legal acts on behalf of the employer - in the case of a legal entity, both its legal representative (statutory body, authorised employee to whom this authority has been delegated, etc.) and contractual representative (e.g. a person authorised to adopt an organisational change on the basis of a power of attorney).

[6] Viz např. rozsudek Nejvyššího soudu ze dne 23. 11. 2022, sp. zn. 21 Cdo 2375/2022.
[7] Viz např. rozsudek Nejvyššího soudu ze dne 16. 11. 2015, sp. zn. 21 Cdo 1494/2014.

In a recent judgment, the Supreme Court also commented on the consequences of the adoption of an organisational change by an unauthorised person, stating the following conclusions. *If the employer's representative (both the legal representative and the representative under a power of attorney agreement) exceeds his or her representative's authority when deciding on an organizational change, the employer may approve the overstepping no later than the delivery of the employee's notice of termination for redundancy. If the Court of Appeal concluded that it had not been proven that the organisational change had been approved by the defendant's* [employer's - author's note] *statutory body prior to the 'termination of employment', its conclusion that the organisational change had not been adopted by a 'competent person'*[8] was correct, which, in the event of an action under section 72 of the Labour Code, is a ground for the court to declare the subsequent termination invalid.

The Labour Code does not require that the employer's decision on organisational change be in writing, nor does it require its prior formal announcement or confirmation in the form of a change in the internal regulations governing the employer's organisational structure (organisational regulations, etc.)[9]. The fact that the employer did not discuss the organisational change with the trade union in contravention of the above rules cannot invalidate the termination.

The individual "organisational grounds for termination" must be consistently distinguished, as they are of a different nature in terms of the nature of the organisational change being implemented and its consequences in terms of the impact on the employer's ability to continue to assign the employee to the work agreed in the employment contract. The general rule set out in Section 50(4) of the Labour Code applies, according to which the employer is obliged to define the reason given in the notice in such a way that it is not interchangeable with another reason.

[8] Rozsudek Nejvyššího soudu ze dne 29. 4. 2024, sp. zn. 21 Cdo 1011/2023.
[9] Srov. PTÁČEK, L. Komentář k § 52 zákoníku práce. In: BĚLINA, M. a kol. *Zákoník práce. Komentář*. Praha: C.H. Beck 2023, s. 338.

The above distinction lies in particular in the conclusions confirmed by the case law of the Supreme Court, according to which

- the adoption of an organisational change consisting in the dissolution or relocation of the employer or part of it results in the employer ceasing to be able to continue to employ the employee, as it is (objectively speaking) no longer able to assign work to the employee under the employment contract, either at all or in the dissolved part of the employer where the employee was still working, or in the agreed place of work (when the employer or part of the employer is relocated outside this place);
- on the contrary, cases falling under the grounds of dismissal for redundancy are characterised by the fact that the employer may continue (objectively speaking) to assign the employee to work of the agreed type at the agreed location after the organisational change has been implemented, but the work of that type is not (at all or to the original extent) needed by the employer in the subsequent period because the employee has become redundant due to the decision on the organisational change[10].

This is also why in the professional literature the term "major organisational changes" is sometimes used for the dissolution and relocation of an employer or a part of it, while other organisational changes within the meaning of Section 52(c) of the Act are sometimes referred to as "major organisational changes" of the Labour Code are usually referred to as "small"[11].

The different nature of the changes in question is also reflected in the regulation of the employee's protection against dismissal (periods of protection). Here, the following applies:

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[10] Srov. rozsudek Nejvyššího soudu ze dne 26. 6. 2019, sp. zn. 21 Cdo 864/2019.
[11] Viz ŠTEFKO, M. Výpověď pro nadbytečnost jako nástroj diskriminace z důvodu věku. *Právní rozhledy*. Praha: C.H. Beck 2018, č. 15-16, s. 545-550.

- in the event of the dissolution of the employer or part of it in accordance with Section 54(a) of the Labour Code, none of the statutory periods of protection (temporary incapacity for work, maternity or parental leave, etc.) protects the employee from termination of employment;
- in the event of relocation of the employer or part of it, only protection during the employee's pregnancy and maternity leave, the employee's paternity leave or his parental leave shall apply in accordance with Section 54(b) of the Labour Code, but only for the period during which the woman is entitled to take maternity leave;
- in the event of dismissal for redundancy, all protection periods under Section 52 of the Labour Code apply.

Thus, an employee dismissed for redundancy is more protected than an employee who is dismissed due to the dissolution or relocation of the employer, which is related to the conclusion that as a result of these two organisational changes, the employer cannot objectively continue to assign the employee work according to the employment contract.

2.2.1.1. Dissolution and relocation of an employer or part of an employer

The prerequisites for the application of the termination ground under Section 52(a) or (b) of the Labour Code are: an accepted organisational change in the form of the dissolution or relocation of the employer or part of it leading to the impossibility of assigning the employee to work of the agreed type and/or in the agreed location.

There is little doubt as to the meaning of "relocation of the employer" - it must be a relocation away from the place of work agreed in the employee's contract of employment.

As for "winding up", this can be broadly defined as an organisational measure as a result of which the employer ceases to carry on, wholly or in part, the business or other activities or tasks for which it employs the employees in the employment relationship[12]. Dissolution in this sense cannot be confused with the dissolution of the employer as a legal entity.

Thus, a dissolution will be, for example, a complete termination of the employer's activity without its deletion from the Commercial Register, but not, for example, a mere long-term restriction (dampening) of this activity[13], its interruption without its definitive termination[14] or a "mere" transfer of the activity performed by a certain unit to another unit or another change in the organisational arrangement of the employer's activity without its simultaneous cessation15. The mere dissolution of a business corporation or other legal entity (with or without liquidation), which precedes the dissolution of the legal entity, also does not automatically fulfil the termination ground under Section 52(a) of the Labour Code, as it does not always have to be connected with the immediate actual termination of the employer's activities or part thereof within the meaning of the labour law.

It will also be important for the assessment of the legitimacy of the use of the termination ground in question whether there is a certain legal successor who continues to perform the employer's activities, and therefore whether the conditions for the (automatic) transfer of rights and obligations under Section 338 of the Labour Code are fulfilled. If the answer is yes, the reason for termination cannot be used and the employment relationship of the employee concerned continues with the successor employer.

A correct understanding of the concept of "part of the employer" is also often crucial for the application of termination grounds for major organisational changes. According to the constant case law of the

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[12] Srov. STRÁNSKÝ, J., Komentář k § 52 zákoníku práce In: STRÁNSKÝ, J. a kol. *Zákoník práce s podrobným…*, op. cit., s. 185.
[13] Viz rozsudek Nejvyššího soudu ze dne 23. 2. 2010, sp. zn. 21 Cdo 191/2009.
[14] Viz rozsudek Nejvyššího soudu ze dne 27. 8. 2013, sp. zn. 21 Cdo 2296/2012.
[15] Viz rozsudek Nejvyššího soudu ze dne 20. 9. 2006, sp. zn. 21 Cdo 3133/2005.

Supreme Court, a part of an employer is a certain component of a commercial establishment through which the employer carries out its business, or another organizational unit in which activities other than business are carried out, which exercises a relatively independent activity within the employer, by which it participates in the overall business or operation of other activities (tasks) of the employer[16].

A part of the employer is characterised by the allocation of certain resources (buildings, machines, tools, etc.) and premises to carry out its activities, is usually registered in the commercial register or listed in the employer's internal organisational regulations, and is usually headed by a senior employee[17]. Therefore, part of the employer cannot be mechanically identified only with the team (group) of employees working in it, which represents only its personnel component. Therefore, the adoption of an organizational change resulting in the dismissal of all employees in a particular department cannot in itself be construed as the abolition of part of the employer[18].

With a certain degree of generalisation, it can be said that parts of an employer will usually be, for example, its branch, workshop, workplace, department or unit[19.]

Relocation or cancellation is a reason for the employer's termination only if it is causally related to the loss of the ability to assign the dismissed employees to work of the agreed type / at the agreed place - if, for example, the employer's loss of the ability to assign work of the agreed type / at the agreed place. If, for example, one particular retail outlet of the employer is closed down, the termination ground in question will (generally speaking) be fulfilled in respect of the sales staff assigned to that outlet (if their work is materially and locally linked to that particular outlet), but not in respect of the employee in the position of 'retail outlet network manager'.

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[16] Rozsudek Nejvyššího soudu ze dne 6. 4. 1996, sp. zn. 2 Cdo 1053/96.
[17] Tamtéž.
[18] Viz rozsudek Nejvyššího soudu ze dne 7. 4. 2011, sp. zn. 21 Cdo 279/2010.
[19] Srov. PTÁČEK, L. Komentář k § 52 zák. práce. In: BĚLINA, M. a kol. *Zákoník práce…*, op. cit., s. 339..

The fundamental conclusion regarding the application of major organisational changes is that the court cannot examine these changes in terms of their reasonableness (meaningfulness) and the objectives of their adoption. Therefore, the employee's argument that the abolition of part of the employer was clearly purposeful (when the employee, as the president of the trade union, *"openly criticized the management actions of the new management"* of the employer) is, generally speaking, of no legal relevance in terms of the existence of the subject ground of termination.[20] The situation would be different only if there were (on the basis of the allegations and evidence submitted by the employee) substantial circumstances that would indicate a clear abuse of the employer's right to adopt organisational changes to the detriment of the employee, against whom the subsequent termination of employment would be a disproportionately harsh sanction compared to the expected benefits of the organisational change for the efficiency of work or the employer's management.[21] To the author's knowledge, the Supreme Court has never found the existence of such circumstances in its case law.

The above limits for the assessment of major organisational changes and the dismissal of employees on the basis of such changes therefore protect the interests of the employer and its right to do business, implemented by making major (large) changes to the structure of the employer and its location, to a greater extent than the employee's right to job stability.

2.2.1.2. Employee redundancy

The situation is considerably different in the case of "small organisational changes" under Section 52(c) of the Labour Code, which provides for the redundancy of an employee caused by the employer's decision on organisational change as a reason for termination. At the same time, however, the provision specifies that it is a decision on a change in the

[20] Viz rozsudek Nejvyššího soudu ze dne 26. 6. 2019, sp. zn. 21 Cdo 864/2019.
[21] Tamtéž.

employer's tasks, technical equipment, etc., which, in accordance with the case law of the Supreme Court, means that a condition for the validity of a termination for a given reason is also the purpose (goal) of the change, the fulfilment of which the employer must actually pursue from the outset by implementing organisational changes (see below).

Section 52(c) of the Labour Code covers all organisational changes in the above sense that take place which occurs to an employer and are not in the nature of the abolition or relocation of the employer or part of the employer. Most often, this involves the abolition of one or more positions, but it is also possible to encounter various types of restructuring, changes in tasks within departments or positions, etc.

The redundancy of an employee's position is defined as the total or at least partial unnecessity of the employee's continued performance of the agreed type of work, while it is also true that partial unnecessity may lead to the position being deemed redundant - the Supreme Court has reached far-reaching conclusions in this regard, for example, by finding a teacher position redundant where an organizational change resulted in a "reduction in basic time" of 1.5 hours per week. However, it was also essential in the present case that the teacher in question had refused to enter into an offered agreement with the employer for shorter working hours before being served with the notice, which the court saw as a prerequisite for the termination for redundancy to be justified in the circumstances[22.]

If the organisational change potentially affects a larger group of employees - e.g. if 4 out of 30 "accountant" positions are abolished, the employer decides on the selection of specific employees for dismissal, and according to the case law of the Supreme Court this decision generally cannot be reviewed in court proceedings[23].

[22] Viz rozsudek Nejvyššího soudu ze dne 20. 11. 2014 sp. zn. 21 Cdo 4442/2013.
[23] Viz rozsudek Nejvyššího soudu ze dne 31. 3. 2020, sp. zn. 21 Cdo 1975/2019.

Thus, although it is appropriate for the employer to use transparent and reasonable criteria (performance, etc.) in selecting the specific employee to be dismissed, these are not considered an integral part of the reason for dismissal and the employer is therefore not obliged to communicate them to the employees concerned.

Nevertheless, it is true that the selection of employees for dismissal cannot be made in a discriminatory manner, e.g. solely on the basis of their age[24]. In practice, however, defending against dismissal for redundancy with the backing of alleged discrimination is not often successful[25].

The above conclusion that the organisational change adopted must pursue a "legitimate aim" - cost savings, increased efficiency, etc. - provides a better chance for the employee to effectively defend against dismissal for redundancy. Thus, if an employer has adopted an organisational change not with the intention of adapting the structure and number of employees to its needs related to the activity it performs, but for a different purpose - often to remove an uncomfortable employee (e.g. a trade union member, for example, because of his critical views of the employer expressed in the context of negotiations to improve the working conditions of employees)[26], such a change is considered to be merely feigned (concealing the employer's real intentions) and therefore not actually occurring[27]. A non-existent organisational change cannot, of course, serve as a proper basis for dismissal.

Similarly, an organisational change adopted by the employer only to avoid having to apply another termination ground from the list in Section 52 of

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[24] Viz nález Ústavního soudu ze dne 30. 4. 2009, sp. zn. II. ÚS 1609/2009.
[25] Srov. KANCELÁŘ VEŘEJNÉHO OCHRÁNCE PRÁV. *Výzkumná zpráva v oblasti diskriminace*, č.j. 46/2014/DIS, kapitola IV.1.1. Dostupné z: https://eso.ochrance.cz/Nalezene/Edit/3892.
[26] Rozhodující není přímo to, zda mezi zaměstnavatelem a zaměstnancem existovaly nějaké konflikty, ale zda byly tyto důvodem přijetí organizační změny a propuštění zaměstnance.
[27] Viz rozsudek Nejvyššího soudu ze dne 27. 4. 2004, sp. zn. 21 Cdo 2204/2003.

the Labour Code (e.g. for the employee's loss of medical fitness[28] or unsatisfactory performance[29]).

In examining what objective was actually pursued by the adoption of the organisational change, the court assesses the employer's conduct in its completeness and logical continuity. Therefore, it is not only the employer's behaviour in the close temporal connection with the adoption of the organisational change that is relevant, but also his previous or subsequent actions, e.g. in the form of employing another employee in the same position as the dismissed "redundant" employee, or in a similar position that differs from the original one, for example only in the title[30]. Also significant is the previous purposeful increase in the number of employees in order to create space for the subsequent abolition of the post and the dismissal of an uncomfortable employee[31].

Thus, all the circumstances that may indicate that the employer merely engineered an organisational change that was intended solely as a means of dismissing a particular employee are relevant. Regardless of whether such a change is called purposeful, feigned or contrived, the conclusion that there is no measure capable of terminating the employment relationship under Section 52(c) of the Labour Code applies to all variants.

Nevertheless, the employee is often left in a difficult position when preparing a defence for a lawsuit for invalidity of termination, as he or she often has little information about the employer's internal decision-making processes. The process of ascertaining the employer's true intentions when adopting organisational changes is also quite challenging.

However, the reasonableness of the adoption of an organisational change in terms of the statutory objectives cannot be confused with its "managerial correctness", which is not subject to judicial review. In other words, the employer's right to manage its activities also includes the right to adopt

[28] Viz rozsudek Nejvyššího soudu ze dne 31. 8. 2012, sp. zn. 21 Cdo 2702/2011.
[29] Viz rozsudek Nejvyššího soudu ze dne 27. 5. 2022, sp. zn. 21 Cdo 3710/2020.
[30] Viz např. rozsudek Nejvyššího soudu ze dne 31. 8. 2012, sp. zn. 21 Cdo 2702/2011.
[31] Viz rozsudek Nejvyššího soudu ze dne 27. 4. 2004, sp. zn. 21 Cdo 2204/2003.

"managerially bad" organisational changes that turn out to be ineffective or have a downright negative impact - e.g. by worsening financial results. Therefore, only the legitimate aim actually pursued by the employer is relevant for the (in)defectiveness of the termination, not its subsequent fulfilment[32].

In connection with the required existence of a causal link between the organisational change and the employee's redundancy, it is appropriate to point out the conclusions of the Supreme Court, according to which the decision on the organisational change (e.g. abolition of a post) may not yet be effective at the time of delivery of the notice to the employee, but its effectiveness (causing the redundancy of the post) must occur at the latest on the date of termination of the employee's employment, i.e. on the date of expiry of the notice period, otherwise the notice is defective[33].

To conclude this section, it may be reiterated that in the context of termination of employment under Section 52(c) of the Labour Code, the legislation offers the employee greater scope for an effective judicial defence against termination, since the legitimate aim of the organisational change being implemented is considered to be part of the given termination ground. At the same time, however, the employee's position in the litigation is often complicated, also due to his information deficit and in view of the Supreme Court's conclusions on the inadmissibility of judicial review of the employer's decision to select redundant employees for dismissal.

2.2.2. Severance pay

In the event of termination of the employment relationship by the employer's notice or by agreement for the organisational reasons discussed above, as referred to in Section 52(a) to (c) of the Labour Code,

[32] Srov. STRÁNSKÝ, J., Komentář k § 52 zákoníku práce. In: STRÁNSKÝ, J. a kol. *Zákoník práce s podrobným…*, op. cit., s. 192-193.
[33] Srov. rozsudek Nejvyššího soudu ze dne 29. 6. 1998, sp. zn. 21 Cdon 1797/97.

the employee is entitled to severance pay under Section 67 of the Labour Code in an amount derived from the duration of the employee's employment relationship with the same employer, including the duration of the previous employment relationship between the same parties, unless more than 6 months have elapsed between the end of the employment relationship and the commencement of the subsequent employment relationship. If, on the other hand, the break between employment relationships lasted longer than 6 months, the duration of the previous relationship will not be taken into account. Previous relationships from contracts for work (CfW) or contracts for activity performance (CfAP) are not counted either.

Severance pays in the cases described above shall be payable to the employee in an amount not less than

- one times his monthly average earnings if his employment with the employer lasted less than 1 year,
- twice his monthly average earnings if his employment with the employer lasted at least 1 year and less than 2 years,
- three times his monthly average earnings if his employment with the employer lasted at least 2 years.

If the employee's working time was scheduled in the form of a working time account and the employment relationship ended at a time when the overtime credited from the immediately preceding compensation period had not yet expired (Section 86(4) of the Labour Code), the above amounts are increased by three times the average monthly earnings.

The definition of the reason for termination of employment is a mandatory part of the notice given by the employer, from which the employee's right to severance pay is derived. However, in the case of an agreement to terminate employment, the parties may either proceed by directly specifying the reason in the agreement or not.

However, the mere mention or not of the reason in the agreement is only of evidentiary importance (it is not determinative of the right to severance pay). The actual reason for the termination of the employment relationship is decisive - if the employer refused to pay the employee severance pay and the employee subsequently proves in a court case for payment of severance pay that the agreement was actually concluded, for example, due to the abolition of the employee's job and the redundancy caused by it, the severance pay would be awarded by the court.[34]

The statutory regulation of severance pay is by its nature unilaterally mandatory, which means that it can only be derogated from in favour of the employee. Thus, the employer may (e.g. on the basis of an agreement in a collective agreement) provide its employees with higher amounts of severance pay than the law provides for and may also pay them severance pay in cases not directly provided for by law, i.e. when other reasons for termination of employment occur, e.g. for long-term loss of medical capacity for reasons unrelated to the performance of work. When adopting your own (more favourable) regulation, it is always necessary to bear in mind the prohibition of discrimination and equal treatment.

The circumstance of whether the employee is granted severance pay in the cases defined by law or, on the contrary, outside their scope is crucial in terms of determining the levy regime for amounts paid to employees. At present, the severance pay provided to an employee under the Labour Code - upon termination of employment for reasons under Section 52(a) to (d) of the Labour Code - is not included in the assessment base for calculating social and health insurance, even if it is provided in excess of the minimum amount set by law. On the other hand, severance pay provided outside these reasons is subject to the levies in question[35].

The employer is obliged to pay the severance pay to the employee upon termination of employment at the earliest pay date, unless the employer

[34] Srov. např. rozsudek Nejvyššího soudu ze dne 18. 12. 2014, sp. zn. 21 Cdo 448/2013.
[35] Srov. také JANŠOVÁ, M. komentář k § 67 zákoníku práce. In: VALENTOVÁ, K., PROCHÁZKA, J., JANŠKOVÁ, M., ODROBINOVÁ, V., BRŮHA, D. a kol. *Zákoník práce. Komentář*. 2. vydání. Praha: C. H. Beck 2022, s. 270.

agrees in writing with the employee to pay the severance pay on the date of termination of employment or at a later date.

The regulation according to which an employee who was subsequently classified as a jobseeker at the Labour Office had the start of unemployment benefit payments postponed in the case of severance pay was abolished as of 1 January 2024.[36]

2.2.3. Mass redundancies

The legislation on collective redundancies, contained in particular in Sections 62 to 64 of the Labour Code, imposes special obligations on employers in the event that they terminate the employment relationship with a large number of employees within a short period of time on the basis of the aforementioned organisational reasons, i.e. the reasons referred to in Section 52(a) to (c) of the Labour Code.

The prescribed procedure therefore does not apply to cases where other grounds for termination of employment are used, nor does it apply to cases where other methods of termination are used (immediate termination, termination during the probationary period). Similarly, the termination of the CfW and CfAP relationships (for whatever reasons) is not decisive for its application.

The purpose of the prescribed obligations, which have their basis in the requirements arising from Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, is mainly to contribute to the mitigation of the adverse social and economic effects of redundancies (with the involvement of trade unions), and to ensure that the regional branch of the Labour Office is informed in good time that an increase in the number of job seekers (with certain qualifications) can be expected.

[36] Viz § 44a zákona č. 435/2004 Sb., o zaměstnanosti, ve znění do 31. 12. 2023.

It is clear from the name of the procedure that its activation depends on the number of employees whose employment is terminated. The decisive number of redundancies is graduated depending on how many employees the employer employs in total. The determinant is the total number of employees of the employer, as well as the total number of "affected employees" before the commencement of the collective redundancy, i.e. before the first "time relevant" notice for organisational reasons is served.

Specifically, a collective redundancy occurs if the employer terminates the employment relationship by giving notice for organisational reasons within a period of 30 calendar days at least:

- 10 employees for employers with between 20 and 100 employees,
- 10% of the workforce for employers with between 101 and 300 employees,
- 30 employees if the employer employs more than 300 employees.

If at least 5 employees were terminated for the reasons given during the 30 calendar days, the number of employees with whom the employment relationship was terminated by agreement for organisational reasons during the same period must be included.

An employer who knows that there will be collective redundancies must give the trade union and the works council (if it is active) written notice of this intention in good time, namely no later than 30 days in advance. In addition, these representatives must be informed of:

- mass redundancies.
- the number and professional composition of the staff to be made redundant,
- the number and professional composition of all employees employed by the employer,
- the period in which the collective redundancies are to take place,

- aspects proposed for the selection of the employees to be dismissed,
- severance pay or other rights of dismissed employees.

As the commentary literature also emphasises, the transmission of the information is not an end in itself. Its basic purpose is to try (especially with the contribution of the trade union, which often has important information beyond the employer's reach) to prevent or limit collective redundancies (e.g. by reassigning the affected employees to other workplaces of the employer) or, if this is not possible, to mitigate the impact of the redundancies on individual employees. Therefore, the law also imposes an obligation on the employer to negotiate with the trade union and works council in order to try to reach agreement on measures to achieve these objectives.[37.]

The employer is obliged to inform the relevant regional branch of the Labour Office of the commencement of negotiations with the trade union and the works council in a written report, which must also contain the above information communicated to the trade union. The written report in question should therefore be prepared and sent to the regional branch of the Labour Office at the time of the start of the negotiations with the employee representatives, and a copy of the report must be delivered to the employee representatives.

The employer's procedure is completed by a written report on the collective redundancies and the results of negotiations with the trade union and the works council, which the employer must deliver to the relevant regional branch of the Labour Office.

The report must include:

- the employer's decision on collective redundancies,

[37] Srov. PUTNA, M. Komentář k § 62-64 zákoníku práce. In: BĚLINA, M. a kol. *Zákoník práce…*, op. cit., s. 429.

- a description of the results of negotiations with the trade union and the works council,
- the total number of employees of the employer,
- the number and occupational composition of the workers affected by the collective redundancies.

One copy of this "final" written report must be delivered by the employer to the trade union and the works council, and these representatives have the right to comment separately on the report and to deliver this comment to the regional office of the Labour Office.

The date of delivery of the "final" written report to the regional branch of the Labour Office is also required to be communicated by the employer to the affected employees themselves, which is related to an important rule contained in Section 63 of the Labour Code, according to which the employment relationship of an employee who is dismissed en masse shall terminate by termination of employment no earlier than 30 consecutive days after the delivery of the employer's written report to the regional branch of the Labour Office.

Therefore, notice periods that began on the first day of the month following the month in which the notices were delivered to the employees cannot end earlier than 30 days after the employer fulfilled its obligation to deliver the final report to the regional branch of the Labour Office. Therefore, if the employer fails to comply with this obligation no later than 30 days before the date on which the notice period should normally expire (see Section 51 of the Labour Code), the duration of the employment relationship of the mass redundancies will be extended. This will mean that the employer will have to continue to assign work to them or provide wage compensation in connection with the non-assignment of work due to an obstacle to work on the employer's side.

The described consequence of the extension of the notice period does not occur if the employee declares that he or she does not insist on the

extension of the employment relationship or if a decision on the employer's bankruptcy has been issued.

An employer who has failed to fulfil its obligations related to collective redundancies towards employee representatives may be fined by the Labour Inspectorate for an offence of up to CZK 200,000 pursuant to Sections 10 and 23 of Act No. 251/2005 Sb., on Labour Inspection, as amended (hereinafter referred to as the "Labour Inspection Act").

2.2.4. Discussion and co-determination by the trade union

Section 61(1) of the Labour Code sets out a general rule (applicable even outside cases of collective redundancies) according to which the employer is obliged to discuss a notice of termination of employment or immediate termination of employment addressed to an employee with the trade union in advance, i.e. before delivering it. The employer is only obliged under Section 61(5) of the Labour Code to inform the trade union organisation of the conclusion of an agreement on the termination of employment or the termination of employment during the probationary period within the agreed time limits.

In the case of termination or immediate dismissal, the employer is obliged to notify the "relevant" trade union[38] that it intends to terminate the employment relationship with a particular employee in one of the ways mentioned above, in a form that allows the trade union to take and express its position on the matter to the employer, i.e. (among other things) with a reasonable period of time to comment. The employer's communication should also describe (at least briefly) the reasons why the employer intends to proceed with the termination or immediate cancellation. On the other hand, the employer is not obliged to inform the trade union of the specific text of the termination negotiations.

[38] If more than one trade union is active at the employer, the "competent" trade union is determined in accordance with Section 286(6) of the Labour Code.

During the discussion, which may take various forms (e.g. a personal meeting between the employer and the trade union or a written exchange of opinions, even in electronic form - for example by e-mail), the trade union has the right to express its views on the intention to dismiss the employee or to suggest other appropriate action or to point out errors in the employer's procedure. It is entitled to request further additional information from the employer if necessary for the assessment of the case[39].

If the trade union does not comment on the intention within a reasonable period of time, the consultation obligation shall be deemed to have been fulfilled.

A negative opinion of the trade union in the hearing does not lead to the conclusion that the employer cannot proceed with the termination or immediate termination of employment. The disagreement of the trade union also has no effect on the validity of the termination negotiations, which also applies in accordance with Section 19(2) of the Labour Code in the case where the employer delivers a notice of termination or immediate dismissal to the employee which was not discussed with the trade union at all. Here, however, it is an offence that can be included under the facts listed in Section 12 or Section 25 of the Labour Inspection Act with a possible fine of up to CZK 2,000,000.

If the employee is also an officer of a trade union organisation operating at the employer, i.e. a member of a body of such an organisation which is entitled to act on its behalf in accordance with its statutes (e.g. a works committee), the stricter procedure under Section 61(2) to (4) of the Labour Code applies. According to these provisions, during the employee's term of office in the relevant body and for 1 year thereafter, the employer must seek the union's prior consent to this legal action before handing in a notice

[39] Viz STRÁNSKÝ, J., Komentář k § 61 zákoníku práce. In: STRÁNSKÝ, J. a kol. *Zákoník práce s podrobným…*, op. cit., s. 256.

of termination or immediate dismissal. It is therefore a more rigorous form of trade union participation than negotiation.

The request for consent, prior to the service of notice or immediate termination, is a formal condition for the validity of the notice or immediate termination. Therefore, if the employer proceeds to terminate the employment of a trade union official without the request in question (or if it does not wait 15 days for a response from the trade union) and if the employee files a lawsuit for the invalidity of the act in question pursuant to Section 72 of the Labour Code, the court will decide on the determination of the invalidity of the termination or immediate cancellation[40].

According to the case law of the Supreme Court, the request must at least indicate that the employer is asking the trade union for consent to terminate the employment relationship, and which specific employee is affected by the termination. Although this may be important for the assessment of the application, according to case law, the employer is not obliged to state the (specific) reason for the termination of employment or otherwise to give further reasons why it intends to terminate the employment relationship. Nor is the employer required to disclose whether and why the employer cannot fairly be required to continue to employ the employee[41] (see below).

The trade union has 15 days from receipt of the request to express its agreement or disagreement. Consent is also deemed to be given if the trade union has not refused consent in writing within the given time limit. Once consent has been given, the employer may use it for the termination of employment within 2 months since it's grant.

If the trade union refuses to give its consent explicitly (in writing), the employer may nevertheless proceed to terminate or immediately terminate the employment of the trade union official. At the same time, however, there is a ground for a court to declare such an action null and void on the

[40] Viz např. rozsudek Nejvyššího soudu ze dne 26. 9. 2016, sp. zn. 21 Cdo 4031/2015
[41] Viz rozsudek Nejvyššího soudu ze dne 24. 1. 2023, sp. zn. 21 Cdo 2100/2022.

basis of a claim by the employee under section 72 of the Labour Code, unless the other conditions for termination are met and (in addition) the employer proves in this dispute that it cannot fairly be required to continue to employ the employee.

In assessing the question of the (non-)existence of a fair requirement for continued employment, the court takes into account the employee's personality (age, life and work experience), his or her past work performance and attitude towards the performance of work tasks, his or her teamwork skills and overall relationship with co-workers, the length of his or her employment, etc.[42] The law thus leaves the court with a wide discretion according to the particular circumstances.

In general, none of the grounds for termination of employment listed in the Labour Code can be used to predict the outcome of the assessment of the (in)possibility of further employment of a trade union official, but for some grounds for termination of employment - especially in the case of major organisational changes in the form of the closure of the employer or part of it, the circumstances will usually be more conducive to the conclusion that the employer cannot be fairly required to continue to employ the employee.[43]

The heightened protective regime also modifies the Supreme Court's conclusion above that the employer's selection of the redundant employee for dismissal was unreviewable. For example, if an employer abolishes one of several identical positions, the independent selection of a redundant employee changes so that the employer may only dismiss a union official whose termination the union has refused to consent to if there are circumstances such that the employer cannot fairly be required to continue to employ the employee.[44] Therefore, the selection of the union official as

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[42] Viz rozsudek Nejvyššího soudu ze dne 26. 11. 2011, sp. zn. 21 Cdo 3561/2010.
[43] Srov. např. případ řešený v rozsudku Nejvyššího soudu ze dne 26. 6. 2019, sp. zn. 21 Cdo 864/2019.
[44] Viz rozsudek Nejvyššího soudu ze dne 4.11.2009, sp. zn. 21 Cdo 938/2009.

the employee to be dismissed must be justified by the circumstances described above, which the court may review in the context of the dispute.

2.3. Trade union involvement, recommendations and challenges for collective bargaining

Above we have analysed the key areas of the legal regulation of employment termination in the context of the impact of the economic crisis. The analysis also showed that there is considerable scope for trade union procedures to protect employees in the event of redundancies for organisational reasons and to preserve jobs with the employer.

The range of possible involvement of the trade union is quite broad - from co-operation with the employer in the preparation and implementation of organisational changes (especially in cases fulfilling the conditions of collective redundancies) to negotiating or approving specific notices delivered to individual employees. There is also scope for collective bargaining and the adjustment of partial issues in the normative parts of collective agreements, typically with regard to increased severance pay provided to employees dismissed for organisational reasons (e.g. according to the number of years of service with the employer), which may at least mitigate the feared economic impact of job losses on employees affected by the employer's organisational and cost-saving measures.

At the same time, however, it should be noted that the scope for co-operation between the trade union and the employer given by the legislation can be fulfilled to a very different extent in application, which depends to a large extent on the bargaining power of the parties, but also on their willingness to reach a real consensual solution to the issues raised.

However, the above conclusions still apply, according to which the decision on the organisational structure and the number or composition of employees is primarily the responsibility of the employer, who is required

by law to negotiate with the trade union on a number of related matters (e.g. pursuant to Section 280, Section 61 or Section 62 of the Labour Code), but certainly not in all details (e.g. regarding the application of the grounds for redundancy to a particular employee). Except in the case of dismissal of trade union officials, the law does not require that the employer's action be co-determined by the trade union or that the employer take certain measures only with its binding consent.

Therefore, the "ideal scenario" is not always fulfilled, where the employer already in the planning and preparation of any structural changes or austerity measures thoroughly discusses the relevant circumstances of these measures with the trade union, which actively represents the interests of employees and effectively contributes to finding an amicable solution that prevents or at least substantially mitigates the negative impact of the adopted changes on employees. It is true that where thorough discussion and resolution of the issues in question is lacking or does not lead to the desired objectives, the risk of litigation increases and the individual protection of dismissed employees becomes more important, possibly even in the context of litigation to determine the invalidity of the termination of employment.

2.3.1. Criteria for selecting redundant staff

As stated in the interpretation of the application of the redundancy ground, according to the established case law of the Supreme Court, if an organisational change affects a larger group of employees, the employer decides on the selection of one or more specific employees for dismissal, and this decision cannot be reviewed in court proceedings.

This interpretation can be considered dangerous from the point of view of employee protection, as it "opens the door" to employers who select redundant employees on discriminatory grounds (including membership in

a trade union) or on the basis of other "inappropriate" reasons (personal antipathy towards the employee, etc.). Therefore, it also seems appropriate for trade unions, as part of procedures aimed at ensuring a greater level of protection for workers and enhancing transparency of employers' practices, to seek to enshrine (e.g. in collective agreements) and apply clear rules for selecting redundant workers for dismissal.

The defining factor in the procedure should be the establishment and use of a list of criteria on the basis of which the employer will select employees. The criteria should be objective and non-discriminatory, but also not too broad (general) so as not to allow the employer to make arbitrary decisions. Care should also be taken to ensure that the assessment criteria set relate exclusively to the employees being compared (potentially dismissed) and that they are related to their performance of work for the employer - they may relate, for example, to their professional skills and abilities, past performance, professional qualifications and length of experience, specific skills and aptitudes for performing the type of work in question, or their approach to the performance of their duties.

The set rules should also address the process of evaluating the criteria and consulting the union on the results (at the latest as part of the pre-termination discussion).

We have also described above the special procedure to be followed where one of the potentially redundant employees is a trade union official whose resignation has been refused by the trade union. For these situations, the Supreme Court inferred from section 61(4) of the Labour Code that the employer's power to independently select a redundant employee is modified so that the employer may only dismiss an employee (union official) if there are circumstances such that the employer cannot fairly be required to continue to employ such an employee. This interpretation should be borne in mind by trade unions in protecting their union leaders.

The protection of employees dismissed for redundancy can also be increased by the collective agreement by establishing an offer obligation

of the employer, i.e. the obligation to offer the employee another suitable position before serving notice. Although the Supreme Court stated in its judgment of 13 February 2020, Case No. 21 Cdo 2244/2018, that a breach of the offer obligation cannot in itself lead to a finding that the termination is invalid, it also added that in certain circumstances (in particular if the employer deliberately circumvented the performance of this obligation in order to harm the employee), there may be grounds for a finding of invalidity.

2.3.2. Negotiating collective redundancies and dismissals

The negotiation of prescribed measures in the context of collective redundancies (collective protection), as well as individual termination notices to employees affected by organisational measures (individual protection), can also serve as an effective tool to protect employees.

With regard to collective redundancies, the first recommendation is that trade unions should monitor organisational changes under preparation with a potential impact on a larger group of employees also in terms of meeting the conditions for collective redundancies, which the employer may (sometimes unlawfully) try to avoid, for example by incorrectly determining the decisive period for monitoring the number of redundancies. It should also be borne in mind that the rule that those whose employment relationship ended for organisational reasons by agreement are counted in the decisive number of dismissed employees only if at least 5 other employees are dismissed for the same reasons.

The specific measures proposed in the context of a collective redundancy negotiation will then depend largely on the circumstances of the situation at hand.

In the field of individual protection of employees, mandatory prior hearing of individual terminations can be applied, which can effectively prevent a disputed termination of employment, which is likely to result in litigation to

determine the invalidity of the termination. It can therefore also be recommended that the trade union should seek to set out clear rules for the consultation, e.g. as regards its form (face-to-face meetings/email communication etc.) and conditions (content of the employer's request for consultation, reasonable time limit for comments etc.).

2.3.3. Increased severance pay

A suitable approach in the field of employment protection may also be for the trade union to seek to enshrine the right of employees to increased severance pay in the collective agreement. This is a solution to mitigate the economic impact of job loss, which, according to the results of the above survey, can cause immediate and significant financial difficulties for a large group of employees.

It can be seen from existing collective agreements and internal regulations that the right to increased severance pay upon termination of employment due to organisational changes is often linked to the length of time the employee has worked for the employer beyond the statutory regulation, i.e. beyond the 3 years specified in Section 67 of the Labour Code (e.g. 5, 10, 15, 20 years). Such a procedure is appropriate because the criterion of the duration of the employment relationship operates objectively and is based on the law.

However, it would be necessary to assess the situation differently if the collective agreement linked the right to an increased severance payment only to the age of the employee, as this would already constitute the application of an impermissible (discriminatory) criterion.

In this context, the practice whereby an employer grants increased severance pay to employees only on the basis of the condition of termination of employment at the time of the employee's entitlement to a retirement pension is also wrong. Here, too, age discrimination is prohibited. If the employer wishes to favour the retiring employee, it is

therefore appropriate to link the increased severance pay to some other objective criterion, such as the minimum duration of the employment relationship before retirement.

The accrual of entitlement to an old-age pension cannot be used in the opposite direction, i.e. as a criterion for not granting an increased severance payment. This conclusion was confirmed by the Supreme Court in its decision of 18 January 2017, Case No. 21 Cdo 5763/2015, in which it found discriminatory (and therefore invalid) the provision contained in the collective agreement, on the basis of which the employer was to provide employees with more than 30 years of service with an increased severance payment of 14 times their average earnings upon termination of employment for organizational reasons, but only if they were not yet entitled to a retirement pension at the time of termination of employment.

3. Fair remuneration

In the context of the risks of the impact of the economic crisis and the challenges to collective bargaining, employee remuneration can be considered a key area. This also corresponds to the current legislative developments in the field of labour law, where remuneration is at the centre of attention of the EU legislator and, as a consequence (to some extent secondarily), of the national legislator. An amendment to the Labour Code is currently being approved to implement Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on a fair minimum wage in the European Union (the "Minimum Wage Directive"). One of the key requirements of the Directive is to strengthen social dialogue so that collective bargaining is the guarantor of decent wages for workers.

In the near future, the legislator will have to start preparing another transposition amendment, which will primarily target the area of remuneration for work. Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 reinforcing the application of the principle of equal pay for men and women for equal work or work of equal value through pay transparency and enforcement mechanisms ("the Transparent Remuneration Directive") is to be implemented by June 2026 at the latest.

The importance of remuneration for employees was confirmed by a survey conducted among Trexima employees. In the first subsection of this section, we will therefore focus on the results of this research and their interpretation. We will then look at the current remuneration legislation. We start from the constitutional and international law context of remuneration, which is important in terms of capturing the broader context of remuneration, its purpose and implications for employees. The individual rules contained in the Labour Code and other legislation are often based on these more general premises, and it is also true that they must not conflict with the constitutional foundations. Next, we will focus on the remuneration rules contained in the Labour Code, also with regard to the

currently planned changes that will soon affect the area of minimum and guaranteed wages.

The final subchapter will focus mainly on the challenges that can be traced in the area of remuneration in the context of the impact of the economic crisis towards social dialogue and collective bargaining. Attention will be paid to what areas and in what directions collective bargaining can be conducted. In doing so, the requirements of the Minimum Wage Directive will also be taken into account, including in particular the obligation to adopt and develop an action plan to promote collective bargaining.

3.1. Results of the Decent Work Survey

Among the areas targeted by the survey[45] was "fair income". Respondents were asked relatively broadly worded questions aimed at assessing how well the wages they receive are sufficient to cover their living needs or how they subjectively perceive the adequacy of their wages or salary. The questions therefore did not examine in detail, for example, the criteria on the basis of which their employer provides individual wage or salary components, nor the issue of equal treatment in remuneration.

The results showed that a slight majority of respondents could not agree with the statement that their income from their employment relationship sufficiently provides for their living needs. Specifically, 17% strongly disagreed and 36% rather disagreed that their income could be assessed as sufficient to meet their living needs.

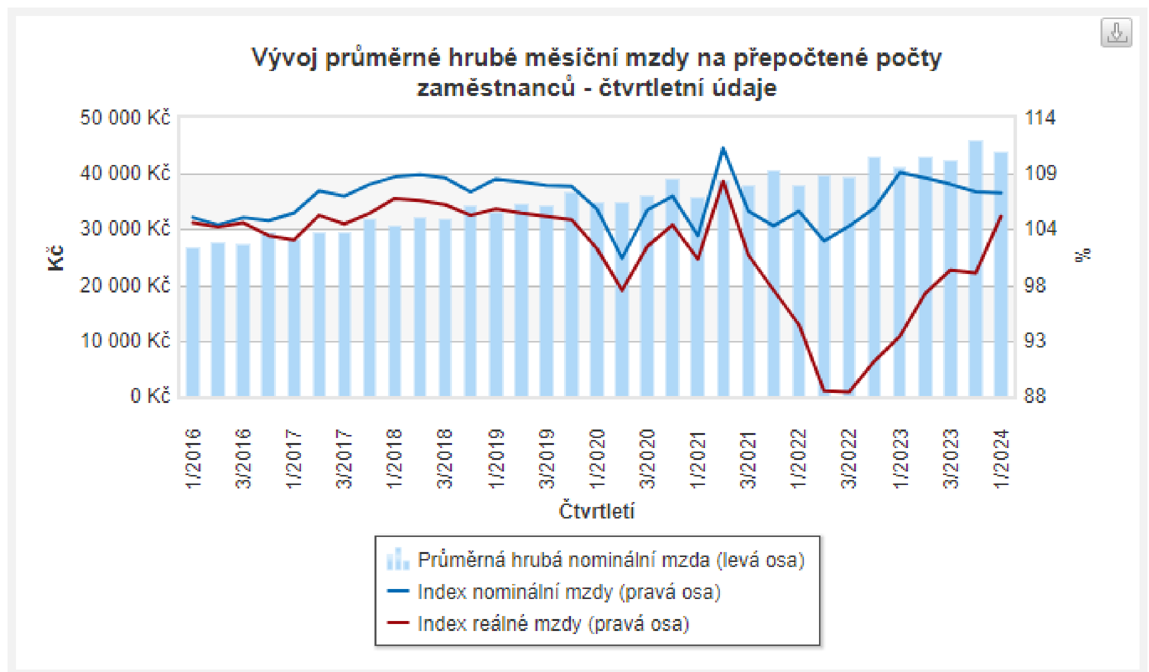
This rather pessimistic result is also reflected in the answers to the question to what extent the respondents consider their income to be adequate in relation to the effort they put in, the results they achieve and the scope of their job responsibilities. One in four respondents (25%)

[45] TREXIMA. Průzkum *Důstojná práce z pohledu…,* op. cit.

strongly disagreed with the assessment of their pay as fair, while another 35% said they disagreed somewhat.

The survey results above are first and foremost an indication of how sensitive an issue remuneration is from the perspective of employees. At the same time, they illustrate that a combination of high inflation and relatively low wage growth has led to a fall in real wages in the Czech Republic in recent years. In this regard, reference can be made to the press release of the Czech Statistical Office of 4 June 2024, which states: *In the longer term, the average wage in Q1 2024 has not yet reached the real level of Q1 2019 and lags 4.7% behind in total. Only employees in the energy sector improved significantly over the five-year period, with real wages rising by 13.2%. Inflation was then beaten by two other sectors: administrative and support activities, up 3.4%, and information and communication activities, up 1.0%. All other sectors experienced real declines, the deepest being in cultural and entertainment activities (down 14.7%), public administration and defence (down 12.2%) and education (down 12.1%)[46].*

[46] ČESKÝ STATISTICKÝ ÚŘAD. *Úroveň reálných mezd se zvedá, předcovidové období ale ještě nedohnala*. [online]. 2024. https://www.czso.cz/csu/czso/uroven-realnych-mezd-se-zveda-predcovidove-obdobi-ale-jeste-nedohnala.



Average gross monthly wages per headcount - quarterly data
Average nominal wage (left axis)
Nominal wage index (right axis)
Real wage index (right axis)

(Source: Czech Statistical Office)

The results of the research confirm the importance of collective bargaining for remuneration and the need to strengthen social dialogue so as to be able to negotiate a wage that employees will perceive as fair and decent in terms of meeting their living needs.

And it is also noteworthy that a total of 50% of respondents said that they either fully (13%) or at least partially (37%) agree that collective agreement arrangements help to ensure decent work in the area of fair pay. A total of 13% of respondents admitted that they did not know what effect a collective agreement had on fair pay, 26% said that collective agreements were rather unhelpful and 9% said they were not helpful at all. The remaining 2% represent cases where the collective agreement does not address remuneration.

Another survey conducted by Trexima focused on, among other things, the future of collective bargaining[47]. The survey found that more than half (53%) of respondents would appreciate gender equality clauses in the workplace. These clauses may focus on equal pay and equal opportunities in the workplace.

In a question focusing on the role of trade unions in promoting sustainability, more than 55% of respondents said that trade unions should focus their attention on the social pillar of sustainability, which mainly means the concept of sustainability in relation to its impact on employees and society in general (e.g. pay equity, professional development of employees, etc.).

3.2. Constitutional and international law background - the right to fair remuneration

Resolution of the Presidium of the Czech National, Council Article 28 No. 2/1993 Sb., on the proclamation of the Charter of Fundamental Rights and Freedoms as part of the constitutional order of the Czech Republic ("Charter") "Charter of Fundamental Rights and Freedoms"), employees have the right to fair remuneration for their work and to satisfactory working conditions. The details shall be laid down by law. Since Article 28 is contained in Article 41(1) of the Charter of Fundamental Rights and Freedoms, the rights to fair remuneration for work and to satisfactory working conditions can only be claimed within the limits of the laws implementing these provisions. However, it is true that a minimum standard must be maintained when regulating these rights by law. At the same time, it is also true that if an employment contract were entered into that violated any of these rights, the court would have to deny protection

[47] TREXIMA. Průzkum *Nové trendy v působení odborových organizací a v kolektivním vyjednávání týkající se budoucnosti kolektivního vyjednávání*. 2023. Dostupný z: https://www.asocr.cz/obsah/66/informace-k-projektu-aso-budoucnost-kolektivniho-vyjednavani/333406.

to an application of the contract that would violate any of the constitutionally protected values.[48.]

Several Conventions adopted by the International Labour Organisation touch on the area of remuneration. Among the conventions ratified by the Czech Republic, we can refer to:

- Convention No. 26 concerning the establishment of methods of fixing minimum wages (Federal Ministry of Foreign Affairs Communication No. 439/1990 Sb.)
- Convention No. 95 on the Protection of Wages (Federal Ministry of Foreign Affairs Communication No. 411/1991 Sb.)
- Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (Federal Ministry of Foreign Affairs Communication No. 450/1990 Sb.)

Within the framework of international law, a detailed guarantee of satisfactory working conditions and fair remuneration for work can be found in the International Covenant on Economic, Social and Cultural Rights (Ministry of Foreign Affairs Decree No. 120/1976 Sb.). According to Article 7 of this document, the Parties recognize the right of everyone to just and satisfactory conditions of work, ensuring in particular:

a) *remuneration, which it provides as a minimum to all workers:*

   i) *fair pay and equal remuneration for work of equal value without any distinction, with women in particular being guaranteed working conditions no worse than those of men, with equal pay for equal work;*

   ii) *a decent life for them and their families, in accordance with the provisions of the present Covenant;*

[48] WINTR, J. Komentář k čl. 28 Listiny základních práv a svobod. In: WAGNEROVÁ, E., ŠIMÍČEK, V., LANGÁŠEK, T. a kol. *Listina základních práv a svobod: Komentář*. Wolters Kluwer. ASPI: Identifikační číslo KO2_1993CZ.

b) *safe and healthy working conditions;*

c) *equal opportunity for all to achieve promotion to the appropriate higher grade in employment, with no criteria other than length of service and ability being applied;*

d) *rest, recuperation and reasonable hours of work and regular paid holidays, as well as pay on public holidays.*

In 2016, the UN Committee on Economic, Social and Cultural Rights elaborated on the content and interpretation of Article 7 of the Covenant in its General Comment No. 23. It stated that *all employees have the right to fair remuneration, and that the concept of this institution should not be understood as static, since it should include several objective criteria, the list of which is not exhaustive. These criteria are to include the results of the work, the responsibilities associated with the work, the necessary level of education and skills required to perform the work, the impact of the work on occupational safety and health, the particular aggravating influences associated with the work, and the impact of the work on the employee's personal and family life. For the vast majority of employees, therefore, fair remuneration should be represented by an amount higher than the minimum wage*[49].

The European Social Charter (Communication of the Ministry of Foreign Affairs No. 14/2000 Sb.) regulates the right to fair remuneration for work in Article 4, according to which the Contracting Parties undertake:

1. Recognise the right of workers to a remuneration for their work that provides them and their families with a decent standard of living,

2. Recognise the right of workers to higher overtime pay, subject to exceptions in special cases,

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[49] VÝBOR OSN PRO HOSPODÁŘSKÁ, SOCIÁLNÍ A KULTURNÍ PRÁVA. *General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)*. [online]. 2016, bod 10., s. 3–4. https://documents.un.org/symbol-explorer?s=E/C.12/GC/23&i=E/C.12/GC/23_0608330.

3. Recognise the right of working men and women to equal pay for work of equal value,

4. Recognise the right of all workers to a reasonable period of notice on termination of employment,

5. allow deductions from wages only under the conditions and to the extent provided for by national laws or regulations or by collective agreements or arbitration awards.

However, it must be emphasized that the Czech Republic declared when ratifying the Charter that it would be bound only by Subsections 2 to 5. Thus, the Czech Republic has not made a commitment to guarantee a decent living wage. It is worth noting that in the latest Report of the Czech Republic on the unratified provisions of the European Social Charter as of 30 June 2023, reference is made to the Guaranteed Wage Adjustment, which provides additional rates of minimum income according to the difficulty, responsibility and strenuousness of the work[50].

From the constitutional guarantee provided for fair remuneration for work by Article 28 of the Charter of Fundamental Rights and Freedoms, the fairness of remuneration can be related both to the work performed and in relation to other employees performing the same work for the same employer. The above-mentioned premises imply both the manifestation of fair remuneration towards ensuring equal treatment and protection against unreasonably low remuneration for work which could result from the abuse of the economically stronger position of the employer. In relation to this, it is suggested that the legislature has a duty to enact and enforce a minimum wage[51].

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[50] MINISTERSTVO PRÁCE A SOCIÁLNÍCH VĚCÍ. *Zpráva České republiky o neratifikovaných ustanoveních Evropské sociální charty k 30. 6 2023*. [online]. https://www.mpsv.cz/evropska-socialni-charta

[51] Srov. MORAVEC, O. Komentář k čl. 28 Listiny základních práv a svobod. In: HUSSEINI, F., BARTOŇ, M., KOKEŠ, M., KOPA, M. a kol. *Listina základních práv a svobod.er of Fundamental Rights and Freedoms. Komentář*. 1. vydání. Praha: C. H. Beck, 2021, s. 814-815.

Other concrete manifestations of the constitutionally enshrined protection of fair remuneration for work can be deduced from the results of the Constitutional Court's decision-making.

In the plenary ruling of 27 November 2012, Pl. ÚS 1/12, the Constitutional Court concluded that *the essence of the* right to fair remuneration for work *is the principle that employees are entitled to remuneration for the performance of dependent work in any form of employment relationship, and in this case the legislator has a wide margin of discretion as to how to ensure its implementation, including the possibility to regulate the method of remuneration and its amount in more detail. It is the remuneration for the work that motivates the employee to perform it and best illustrates the mutual position of both parties in the employment relationship. At the same time, it enables employees to create the conditions for a dignified life and the creation and maintenance of social relationships.*

In the ruling of 16 June 2015, Case No. II. ÚS 3399/14, the Constitutional Court stated that the right to fair remuneration for work includes the employer's obligation to actually pay the employee the wages to which he or she is entitled. In this ruling, the Constitutional Court also referred to Article 12(1) of ILO Convention No. 95, according to which wages must be paid regularly and a time limit must be set by which wages must be paid.

The Constitutional Court has also dealt with fair remuneration for work in its recent ruling of 18 October 2021, Case No. II ÚS 1854/20. In the context of the dispute as to whether a certain period of time should be considered a break in work, which is not part of working time and for which neither wages nor wage compensation is due, or only a reasonable period of time for a meal and rest, which is included in working time and for which the employee is entitled to wages, the Constitutional Court stated that the *right to fair remuneration for work guaranteed in Art. 28 of the Charter implies the right of every employee to be fairly remunerated for the time during which he performs work for the employer or is at the employer's disposal, ready to intervene immediately at the place designated by the employer. Unpaid rest time can only be such time as the employee is free to use at*

his or her discretion, i.e. to take a break and not be at the employer's disposal during this time.

3.3. Remuneration legislation and its expected development in the coming period

In the chapter focused on the current legislation and its currently planned changes, we will first focus on the current regulation of wage determination and the minimum and guaranteed wages. This will be followed by an analysis of the currently drafted transposition amendment to the Labour Code 2024, which will significantly affect these institutes. Next, we will focus on the current regulation of remuneration criteria, which may also be affected in the near future by changes related to the obligation to introduce a remuneration system for employers. This is one of the requirements of the Transparent Remuneration Directive.

3.3.1. Determining the amount of wages - payroll vs. negotiating the amount of wages

Wages may be negotiated between the employer and the employee. The contractual nature of the employment relationship, as well as the importance of the wage for the employee, is best served if the parties actually agree on the amount of the wage. However, the amount of wages is not one of the essential elements of the employment contract. Therefore, it does not have to be agreed and other ways of determining its amount remain permissible. If the amount of the wage has been negotiated, it means that the amount of the wage has been determined by bilateral legal negotiations. Again, a change in the agreed amount of wages can only be made on the basis of a bilateral expression of will. It is not permissible to change the outcome of an agreement between two parties unilaterally.

From the employee's point of view, the negotiated wage is a guarantee that he or she will actually be entitled to the agreed wage in the

employment relationship until he or she agrees with the employer on a change, or until the change is made by agreement between the employer and the trade union if the wage has been negotiated in a collective agreement.

In addition to the negotiation of wages, the Labour Code also allows for the amount of wages to be set by the employer in an internal regulation or wage assessment. The internal regulations, as well as the wage schedule, are unilateral measures taken by the employer. If the wage is set by the employer for the employee, this means that the employer can decide unilaterally on any change in the amount of the wage.

The determination of wages by means of an internal regulation and a wage assessment provides advantages primarily from the perspective of the employer, who can then decide unilaterally on changes in the amount of individual wage components of employees and thus react, for example, to the development of the economic and economic situation or changes in the quality of performance of work tasks and the employee's performance. The employee must be informed of any change in the pay scale before starting work, i.e. before starting work under the new pay conditions. An employee whose employer served a change in the wage assessment retrospectively and attempted to reduce his wages in this way could successfully claim that he should be paid his previous wages up to the day before the date of service of the change in the wage assessment.

An internal regulation is by its nature a collective act that applies to all employees of the employer or to a specific group of employees. The employer can use its issue to set general remuneration rules. The internal regulation may, for example, contain descriptions of the individual jobs performed by the employees of the employer, their classification into certain groups and the determination of the basic rates to be paid to employees for the performance of work classified in a certain group. The internal wage regulations usually contain the determination of the individual wage components to which employees will be entitled and the criteria under which employees may be paid each component.

Due to the collective nature of internal regulations, these acts cannot determine the wage rights of individual (specifically designated) employees. To this end, employers usually issue wage statements to employees on the basis of an internal wage regulation.

In such cases, the content of the wage assessment is primarily the amount of the wage, or the individual wage components to which the employee will be entitled for the work performed in the employment relationship. It follows from Section 113(4) of the Labour Code that the pay slip must be in writing. In addition, the wage slip is one of the documents that the employer must deliver to the employee by hand. Therefore, in order to prove the delivery of the wage assessment in their own hands, employers usually hand over one copy to the employee and file the other copy, on which the employee confirms receipt by signing it, in the employee's personal file. However, this signature, which the employee affixes to the pay slip, does not change the unilateral nature of the pay slip.

If the employer wishes to preserve the unilateral nature of the wage assessment, by which it determines employees' wage rights, it is not possible to refer to this document in the employment contract as an annex or part thereof. For the assessment of the expression of will, it is not important how it is labelled, but what its actual content is. Therefore, if the employment contract included a document labelled as a pay slip as part of it, then it had to be considered as a bilateral legal transaction regardless of the 'slip' designation. This occurs in cases where the contract states, for example: The amount of your salary has been determined by a pay slip dated 30 June 2024, which forms an integral part of this employment contract.

It cannot be stipulated in the wage assessment that the employer will pay the wages by transferring them to the employee's bank account. The possibility to pay wages in this way is subject to Section 143(1) of the Labour Code by agreement of the parties. Similarly, it is not permissible for an employer to determine an employee's wage by means of a wage assessment taking into account any overtime work. Pursuant to Section

114(3) of the Labour Code, such a solution can only be applied in the case where the wage has been agreed, taking into account any overtime work, and at the same time the extent of the overtime work has also been agreed, which was taken into account when agreeing the wage. The wage slip is unilateral in nature and thus the determination of the amount of wages by means of the slip cannot be considered as a wage negotiation.

3.3.2. Minimum and guaranteed wage

The **minimum wage** expresses the lowest permissible amount of monetary benefit to which an employee performing dependent work for an employer must always be entitled. Irrespective of the extent to which the criteria for determining the amount of wages or salary pursuant to Section 109(4) of the Labour Code are met and evaluated for a particular employee, the employee must always be entitled to at least the minimum wage.

The purpose of the minimum wage is primarily to protect the employee from an unreasonably low wage, i.e. a wage that would not provide him with sufficient resources to meet his living needs. It is a manifestation of wage protection linked to its maintenance function. At the same time, the minimum wage adjustment is also intended to contribute to the motivation to earn a livelihood through work. It is aimed at ensuring that the employee earns an income in the course of his/her dependent work that exceeds any benefits provided by the social security system, in particular material hardship assistance.

From the employer's point of view, the minimum wage can be perceived as the lowest permissible level of costs associated with the performance of dependent work by the employee, which the employee must always be prepared to bear in connection with the establishment of the basic employment relationship.

However, given the existence of the institution of guaranteed wages, the minimum wage cannot be understood as meaning that it can be granted to any employee for the performance of work. If an employee performs work falling into a higher than the first job group for the purposes of the guaranteed wage and his wage is not agreed in a collective agreement, he shall be entitled to a wage corresponding at least to the lowest level of the guaranteed wage for the relevant job group.

If the employer provides the employee with a wage in kind, at least the minimum wage must be paid to the employee in money according to the second sentence of Section 119 of the Labour Code. A living wage can therefore only be granted if the total amount of the agreed or fixed wage exceeds the minimum wage.

For the purposes of ensuring the employee's right to the minimum wage, the total amount of his wages, salary or remuneration shall not take into account overtime pay (i.e. not even overtime premium pay). In addition, no additional pay for working on public holidays is included in the wage or salary. If the employee has worked a scheduled shift on a holiday, the wages earned are included in the minimum wage. For any overtime worked on a public holiday, the above rule applies, according to which overtime pay is not included in the wage for minimum wage purposes.

Furthermore, in terms of preserving the employee's right to the minimum wage, allowances for night work, work in difficult working environments and work on Saturdays and Sundays are not taken into account. It follows from the above that if the amount of the employee's wage or salary, after deduction of those components that are not taken into account for the purposes of the minimum wage (not included in the wage or salary), would not reach the minimum wage, the employer's obligation to provide the employee with a supplement to the minimum wage under Section 111(3) of the Labour Code would apply.

The current minimum wage rate is determined by a government regulation issued on the basis of the authorisation in Section 111(2) of the Labour

Code. Government Regulation No. 567/2006 Sb., on minimum wages, minimum levels of guaranteed wages and work in difficult working environments (hereinafter referred to as "Regulation 567/2006 Sb."). This government regulation is usually amended on 1 January each year. Based on the latest amendment made effective January 1, 2024, the minimum wage rates are:

- 112.50 CZK per hour or
- 18,900 CZK per month

The definition of **a guaranteed wage** appears at first glance to mean that the employee's guaranteed wage is the wage or salary at the rate at which it was set by the employer or agreed with the employer, if it is a wage. However, it is clear from paragraph 2 that there are certain minimum rates of guaranteed pay which must be respected when negotiating or determining the amount of wages or salary. These rates are regulated by Regulation No 567/2006 Sb. If an employee's salary or wage was negotiated or determined in such a way that it did not reach the relevant minimum level of the guaranteed wage under the said Government Regulation, the guaranteed wage would have to be considered to be not the negotiated or determined amount of the salary or wage, but the amount of the salary or wage to which the employee was entitled "pursuant to this Act", i.e. in the amount corresponding to the relevant minimum level of the guaranteed wage under Regulation No 567/2006 Sb.

Similarly to the minimum wage, Regulation No. 567/2006 sets the lowest permissible rates of the guaranteed wage. However, there are eight such rates in total compared to the single minimum wage rate and, unlike the minimum wage, they reflect the criteria decisive for determining the amount of wages or salary referred to in Section 109(4) of the Labour Code, or at least those that can be objectively determined. The essence of the guaranteed wage legislation is thus that it determines the lowest permissible level of an employee's earnings, depending on the difficulty

and responsibility of the work performed and taking into account the necessary qualifications.

The following guaranteed wage rates apply in 2024:

Group of works	Lowest level in CZK per hour	Lowest level in CZK per month
1.	112.50	18,900
2.	116.10	19,500
3.	126.80	21,300
4.	129.80	21,800
5.	143.30	24,100
6.	158.20	26,600
7.	174.70	29,400
8.	225.00	37,800

However, the rates regulated here apply only to employees remunerated by salary (employees of employers listed in Section 109(3) of the Labour Code) and those employees remunerated by salary whose salary has not been agreed in a collective agreement. This means that it is possible to deviate from the minimum guaranteed wage levels through a modification in the collective agreement. Even in a collective agreement, a wage lower than the minimum wage cannot be negotiated. Otherwise, however, the

legislation leaves the parties to collective bargaining free to negotiate wage levels in any way they wish, without having to take into account the guaranteed wage rates set out in Regulation No. 567/2006 Sb.

3.3.3. The forthcoming transposition of the Minimum Wage Directive

At the time of this analysis, preparations for the amendment of the Labour Code to implement the Minimum Wage Directive are at their peak. At the time of the study, the draft amendment in question had been approved by the Chamber of Deputies and was under consideration in the Senate (hereafter referred to as the "Draft Transposition Amendment to the Labour Code 2024")[52]. In addition to adjustments to the minimum wage, the guaranteed wage is to undergo significant changes.

One of the requirements of the Minimum Wage Directive is that Member States establish a predictable mechanism for setting the minimum wage. The Directive specifically states that *In order to ensure adequate minimum wages ... sound rules, procedures and effective practices for setting and updating legal minimum wages are necessary*[53]*. As regards the level of the minimum wage, Member States should use indicators and associated benchmarks under the Minimum Wage Directive, with the ratio of the gross minimum wage to 60% of the median gross wage or 50% of the average gross wage offered as a model indicator*[54].

According to the proposed new wording of Section 111(3) of the Labour Code, the monthly minimum wage is to correspond to the *product of the prediction of the average gross monthly nominal wage in the national economy for the following calendar year and the coefficient for calculating the minimum wage*. The coefficient is to be set by the government, with an *indicative reference value of 47% of the average gross wage in the national*

[52] POSLANECKÁ SNĚMOVNA PARLAMENTU ČR. Návrh zákona, kterým se mění zákoník práce a některé další zákony. Sněmovní tisk 663. Dostupný z: https://www.psp.cz/sqw/tisky.sqw?O=9&T=663.
[53] Recitál (26) směrnice o minimálních mzdách.
[54] Recitál (28) a čl. 5 odst. 4. směrnice o minimálních mzdách.

economy also to be used to assess its adequacy. The press release of the Ministry of Labour and Social Affairs of the Czech Republic[55] shows that reaching the 47% level is only a long-term goal to be achieved in 2029. For 2025, a minimum wage level equivalent to 42.2% of the average wage is assumed.

The version of the draft transposition amendment to the Labour Code 2024, which was sent for comments and, after the comments were settled, submitted to the Government of the Czech Republic[56], envisaged a reduction of the existing guaranteed wage system. Only 4 groups of works were to remain. However, the government unexpectedly decided to transform the guaranteed wages into a guaranteed salary. Salaries are paid to employees in the public services and administration. Employees in the so-called private or entrepreneurial sector are remunerated by wages. Until now, the guaranteed wage has been applied in both the private and public spheres. However, the conversion of the guaranteed wage into a guaranteed salary will lead to the complete abolition of the guaranteed wage system in the private sector.

In the context of the survey of employees described above, it is appropriate to ask what consequences the abolition of the guaranteed wage will have on wage levels, especially for employees with below-average or significantly below-average earnings who already assess their income as insufficient to meet their living needs. In official materials, specifically in the resulting RIA (Regulatory Impact Assessment) report[57], the Ministry of Labour and Social Affairs explicitly acknowledged that the abolition of guaranteed wages would reduce the level of protection for employees. The RIA states that the abolition of guaranteed wages will be sufficiently

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[55] MINISTERSTVO PRÁCE A SOCIÁLNÍCH VĚCÍ. *Tisková zpráva ze dne 20. března 2024.* [online]. 2024. https://www.mpsv.cz/documents/20142/7095934/TZ_20_03_2024_Valorizace+minim%C3%A1ln%C3%AD+mzdy.pdf/319c26c2-47b8-9d45-37e2-135926821efb.

[56] ÚŘAD VLÁDY ČŘ. Veřejná část elektronické knihovny připravované legislativy. Návrh zákona, kterým se mění zákoník práce a některé další zákony. Č.j. předkladatele MPSV-2023/180883-522/3. Verze pro jednání vlády. Dostupné z: https://odok.cz/portal/veklep/material/ALBSCWHBH33R/KORNCZYLPR33

[57] Tamtéž.

compensated for by a gradual increase in the minimum wage, or collective bargaining, which is, however, a rather questionable claim, given both the level of the proposed minimum wage and the as yet unknown form of support for collective bargaining. The RIA warns of other negative effects of the abolition of guaranteed wages, such as an increase in the risk of moving into the informal economy or a decrease in the motivation of employees to perform more demanding work or to work at all.

The Minimum Wage Directive contains a non-regression principle. This is the usual mechanism under which the transposition of a directive by Member States must not be used to lower the existing standard of protection for workers. Specifically, Article 16(1) of the Directive reads: *This directive is no longer protected by applicable law due to the reduction of the general level of workers in the Member States, in particular the reduction or abolition of minimum wages.* This article is supplemented by a recital (38): *The implementation of this Directive cannot be used to limit the existing rights of workers, nor can it be considered a valid reason to reduce the general level of protection afforded to workers in the areas covered by this Directive, including in particular as regards the reduction or abolition of minimum wages.*

The Report of the Expert Group on the transposition of the Minimum Wage Directive[58] states that the transposition of the Directive must not lead to the reduction or abolition of minimum wages. With reference to the results of the CJEU's case law, it is added that the prohibition on reducing the existing general level of protection applies to protection relating specifically to minimum wages. The condition of a reduction in the general level of protection would be met if the measure has a possible overall effect on the minimum income protection afforded to employees in the Member State.

In terms of their purpose and meaning, guaranteed wages are an instrument that applies to all employees in general and provides them with

[58] EVROPSKÁ KOMISE. *Report of Expert group on Transposition of Directive (EU) 2022/2041 on adequate minimum wages in the European Union*. Luxemburg: Publikační centrum EU, 2023, s. 69-70. Dostupné z: https://ec.europa.eu/social/main.jsp?catId=1539.

protection against unreasonably low earnings in relation to the responsibility, workload and other objective criteria associated with the performance of the work. In simplification materials intended for foreigners, for example, the term guaranteed wage is also linguistically associated with the minimum wage and the guaranteed wage is presented as a tool to protect the minimum income level[59]. Also, for simplicity and conciseness, courts sometimes use the phrase "guaranteed minimum wage" to convey that the purpose and meaning of the guaranteed wage is similar to that of the minimum wage, i.e., it is in effect additional levels of minimum wages[60].

From these perspectives, the question is therefore whether the transposition amendment to the Labour Code 2024, if adopted in its currently proposed form, will constitute a correct transposition of the Minimum Wage Directive. It will probably be a matter for further consideration whether the abolition of guaranteed wages for salaried employees has resulted in a breach of Article 16(1) of the Minimum Wages Directive, i.e. a breach of the non-regression principle described above.

3.3.4. Criteria for remuneration and equal treatment

Wages or salary is to be provided by the employer to employees for work performed. Following this basic rule, Article 109(4) of the Labour Code further provides that pay is to be granted on the basis of the complexity, responsibility and exertion of the work, the difficulty of the working

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[59] Viz např. Informaci Ministerstva práce a sociálních věcí ČR určenou pro občany Ukrajiny a v ní formulaci: *Jako zaměstnanci máte v ČR nárok na odměnu za práci minimálně ve výši 96,40 Kč za hodinu. Pro odborné a náročnější práce je minimální mzda vyšší.* MINISTERSTVO PRÁCE A SOCIÁLNÍCH VĚCÍ. *Zaměstnání v České republice.* [online]. Dostupné z: https://www.suip.cz/documents/20142/405931/Letak_prace_ED.pdf/bd4c3791-3a07-7cd3-5fa7-0fc46666cb05.

[60] Viz např. rozsudek Nejvyššího správního soudu ze dne 31. 1. 2017, čj. 4 Ads 244/2016-36, bod odůvodnění rozsudku [34]: *Nejvyšší správní soud se dále zabýval námitkou, podle níž byli zaměstnanci stěžovatele pro účely stanovení výše sankce za správní delikt podle § 26 odst. 1 písm. b) zákona o zaměstnanosti zařazeni do nesprávné skupiny prací udávajících **minimální zaručenou mzdu** podle nařízení vlády. Stěžovatel namítá, že náplň práce zaměstnanců odpovídala 5. skupině prací podle přílohy nařízení vlády, namísto skupiny 6., do které zaměstnance zařadil žalovaný.*

conditions, the performance of the work and the results achieved. These concepts are quite general and therefore employers usually proceed to specify them. The employer may, for example, adjust in its remuneration system how and according to what it will assess performance, what the key performance indicators will be, to what extent it will take into account the individual manifestations of the complexity, responsibility and exertion of the work, etc. It may also determine the methods and frequency of assessing compliance with individual criteria, and their weighting in calculating the amount of specific wage components.

In view of the basic rules of remuneration, it is essential that the employer uses predetermined criteria when granting individual wage components. Employees need to know which specific aspects of those offered by the law will be decisive for a certain wage component. It is not permissible to provide employees with a salary at random, without reference to predetermined indicators. This applies not only to entitlement wages but also to the so-called non-entitlement wage components. Sometimes employers provide various above-fee or variable components in a very loose manner, without any internal regulation of the conditions under which they will be paid to employees. The employers then argue that, as far as the non-reward components are concerned, they can be provided at the discretion of individual managers, and it is not necessary to specify the criteria or other rules.

However, this approach to remuneration is not in line with the remuneration rules. Moreover, it may lead to impermissible arbitrariness, randomness and, as a consequence, a violation of equal treatment. Non-merit components may also be linked to looser (softer) criteria, subject, for example, to the assessment of the manager. However, the criteria must always be set and known to employees in advance.

It is clear from the results of judicial decision-making that the list of criteria set out in Section 109(4) of the Labour Code is exhaustive. This means that the employer can elaborate and specify the aspects mentioned here. But it cannot create entirely new ones, unknown to the law. For example,

it is not permissible to provide that the wage component of individual employees performing the same work for the same employer will differ depending on where they perform their work (for example, in Prague or in another location in the Czech Republic[61]). It is not appropriate to argue that the employer must take into account the local specificities of the labour market or the price level applicable in a particular region. Such criteria are not directly related to the work, conditions or results of the work and have no ground in law.

That decision was also subjected to Constitutional review. The Constitutional Court did not overturn the Supreme Court's judgment. In the reasoning of its decision, the Court stated, inter alia, that the criterion of socio-economic conditions could be a relevant criterion for remuneration, but the provisions of Section 109(4) of the Labour Code do not take into account such an aspect and it is not the role of the Court to substitute the role of the legislator in this respect.[62] This finding has also been subjected to some criticism, according to which the Constitutional Court reached a conclusion that is difficult to accept, since the differential treatment invoked by the defendant employer could be objectively justified by the different socio-economic differences between regions[63]. It should be added that the Constitutional Court did not question the fact that legislation could be adopted which could justify such a justification of the difference between the amount of wages from the same employer. It can be understood from the ruling that such a regulation could probably not be assessed as unconstitutional. However, the Constitutional Court has stated that the way the remuneration criteria are set out in the current legislation does not provide room for them to be supplemented by aspects that have no basis in the legislation (such as, for example, the different socio-economic conditions alleged by the employer in different regions).

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[61] Viz rozsudek Nejvyššího soudu ze dne 20. 7. 2020, sp. zn. 21 Cdo 3955/2018.
[62] Viz nález Ústavního soudu ze dne 31. 8. 2021, sp. zn. I. ÚS 2820/20.
Stěžovatel namítá, že náplň práce zaměstnanců odpovídala 5. skupině prací podle přílohy nařízení vlády, namísto skupiny 6., do které zaměstnance zařadil žalovaný. In: KÜHN, Z., KRATOCHVÍL, J., KRNEC, J., KOSAŘ, D. a kol. *Listina základních práv a svobod – Velký komentář*. Praha: Leges, 2022. ASPI: Identifikační číslo KO2I1993CZ.

The criteria for the amount of wages or salary set out in Section 109(4) of the Labour Code include, among other things, performance and the results achieved at work. Even for employees performing otherwise identical work or work of equal value, work results and performance can be highly variable depending on a number of objective and subjective factors such as experience, ability, work commitment, etc. If the amount of wages or salary varies in proportion to the differences in work performance or results of individual employees, there is no violation of the right to equal pay for equal work or work of equal value. Similarly, any difference in pay between different employees may be justified by other objective considerations related to the work performed.

Equal pay does not mean that an employer must not discriminate between employees at any cost. The essence of equal treatment is that the employer must be able to explain any difference reasonably and objectively. In particular, reference may be made to a case where an employee working as a head of the personnel department sued his employer for payment of an additional bonus for professional experience. This was a wage component provided in excess of the law. The employer granted it only to employees in blue-collar occupations, subject to certain conditions, on the basis of a certain length of service. Employees performing administrative work did not receive this wage component, which the employer justified on the grounds that their educational qualifications had been required from the beginning of their employment and that the amount of their wages depended, inter alia, on such qualifications. The employee was unsuccessful in this lawsuit, and the Supreme Court concluded that it was a legitimate form of disparate treatment and not an inequality[64].

3.3.5. Transparent Remuneration Directive and its expected transposition

[64] Viz rozsudek Nejvyššího soudu ze dne 18. 1. 2022, sp. zn. 21 Cdo 627/2021.

The issue of remuneration criteria, as well as the principle of equal pay for equal work, will undoubtedly be very topical in our context in the coming period. The requirements based on the Transparency Directive are to be implemented by June 2026 at the latest. The Directive emphasises, among other things, that employers must establish and maintain a remuneration system.

This concept is already mentioned in the current Labour Code, in Section 287(2)(d), according to which the employer is obliged to discuss the system of remuneration and evaluation of employees with the trade union. However, the Labour Code does not contain any definition. It can only be interpreted as meaning that the remuneration system should be an internally coherent, coherent and transparent set of internal remuneration rules, which may be represented in the employer's internal regulations or in a collective agreement. It should include a list of the pay components to which employees are entitled, the pay forms applicable to each pay component, the period for which the pay components are paid and the criteria that must be met for entitlement to the pay component. The remuneration system must be accessible, understandable, clear and transparent. When these conditions are met, it is intended to be an important tool for ensuring fair remuneration and compliance with the principle of equal pay for equal work or work of equal value.

The Transparent Remuneration Directive explicitly includes a requirement for employers to have remuneration systems in place that guarantee equal treatment[65]. It can therefore be expected that this concept will be specified in the Labour Code in terms of its content and that employers will be obliged to have a clear and accessible remuneration system.

This is not the only noteworthy requirement arising from the Directive. For example, under its Article 7(5), *employees must not be prevented from disclosing information about their remuneration for the purposes of enforcing the principle of equal pay. Member States shall, in particular, take*

[65] Čl. 4 odst. 1 a recitál (26) směrnice o transparentním odměňování.

measures to prohibit contractual conditions which prevent workers from disclosing information about their remuneration. Given that it is currently quite common to come across similar arrangements in employment contracts or provisions in work schedules or other internal company documents, this will be a significant development.

In order to enhance transparency of remuneration, the Directive implies that job applicants should *receive information on the initial remuneration or the range of remuneration before the job interview or in some other way before the conclusion of the employment contract, for example in a published vacancy notice*[66]*. Of course, it is necessary to wait how the Czech legislator will deal with these requirements in the implementation process and how these rules will be incorporated into the Czech legal system.*

3.4. Trade union involvement, recommendations and challenges for collective bargaining

The rising cost of living, compounded by high inflation, is putting upward pressure on wages. However, inflation, especially in energy prices, also affects employers' costs and their overall economic situation. The combination of these influences poses a serious challenge to collective bargaining in the area of pay. Trade union negotiators must prepare for really tough negotiations in which their task will be to defend and promote the demands of workers.

The legislator should take steps to promote collective bargaining in connection with the transposition of the Minimum Wage Directive. The Directive requires each Member State where the coverage rate of collective agreements is below the 80% threshold to adopt an action plan. This should include a clear timetable, and concrete measures aimed at gradually increasing the level of coverage by collective agreements.

[66] Recitál (32) směrnice o transparentním odměňování.

Although the implementation deadline for the Adequate Minimum Wages Directive will expire in November this year, an action plan has not yet been drawn up. The social partners have not yet even discussed the proposal. We can therefore only speculate what specific measures will be taken in our context to promote collective bargaining.

3.4.1. Obligation to conduct collective bargaining and provide assistance

Section 8(3) of the Collective Bargaining Act already imposes an obligation on the parties to negotiate with each other and to provide other required cooperation. This rule cannot imply an obligation to conclude a collective agreement, but it does imply that parties cannot refuse to participate in collective bargaining. Instead, they must participate in the negotiation process in a serious way and try to find room for compromise. Neither party can completely reject a proposal for a collective agreement on the grounds that it is not interested in concluding a collective agreement.

The employer is not entitled to refuse to bargain over remuneration on the grounds that it regulates this issue through an internal regulation. Under Section 305(1) of the Labour Code, the employer may regulate the wage, salary or other rights of employees in labour relations by internal regulations, but this option cannot be understood as a negation of collective bargaining. A trade union can therefore make demands for bargaining on particular aspects of remuneration rules, regardless of whether or how the employer regulates this area in its internal regulations. Following the outcome of the collective bargaining process, the employer may amend the internal regulation, which it decides unilaterally to issue or amend, accordingly.

The legislation is also prepared for the possible coexistence of a collective agreement and an internal regulation. Pursuant to Section 307(2) of the Labour Code, if a contract or an internal regulation contains a regulation of wage or salary rights and other rights in labour relations, according to

which an employee is to be entitled to more than one of the same rights, only one such right shall be granted to the employee, namely the one designated by the employee. It is therefore not the case that a collective agreement has immediate primacy of application over an internal regulation or an internal regulation over a collective agreement. In the event of a contradiction between the contents of these documents, there is no consequence of invalidity of one of them. It remains up to the employee to choose whether he or she is interested in exercising a right arising from an internal regulation or a collective agreement. Employees should therefore, in this case, individually or collectively inform the employer whether they are interested in performance under a collective agreement or an internal regulation. It follows from the nature of the case that employees will choose the right that is more advantageous to them, and therefore employers in the cases described above usually automatically follow the arrangement that offers employees a greater range of rights.

However, the area of collective bargaining at sectoral level remains complicated in relation to the obligation to bargain collectively. The interpretation applied here is that it is up to the contracting party to decide whether or with whom to negotiate a higher-level collective agreement at sectoral level. Moreover, case law has confirmed that if an employers' association was not established for the purpose of participating in social dialogue, it is not an employers' organisation within the meaning of Section 23(2) of the Labour Code and is not obliged to conduct collective bargaining.[67] This is one of the limits to the intensified development of collective bargaining in our conditions and one of the challenges for the aforementioned action plan to promote collective bargaining.

3.4.2. Implications of the possible abolition of the guaranteed wage for collective bargaining

[67] Rozsudek Nejvyššího správního soudu ze dne 10. 12. 2019, č. j. 4 Ads 226/2019–47.

If, through the currently discussed draft transposition amendment to the Labour Code 2024, guaranteed wages are abolished or transformed into a guaranteed salary, this step will have a significant impact on collective bargaining. In many cases, individual guaranteed wage rates act as a kind of springboard for collective bargaining on wages. It is also often the case that individual rates of guaranteed wages are adopted into collective agreements with reference to Regulation No. 567/2006 Sb., with the proviso that the collective agreement merely adds individual positions and assigns them to the relevant guaranteed wage groups.

The eventual abolition of the guaranteed wage will mean that the minimum wage will remain the only tangible point of reference in terms of guaranteed income. Negotiators on the union side will face an uphill task if they want to ensure that the wages of the affected workers are not reduced. They should aim at defining individual tariff groups of employees at the employer, divided according to responsibility, difficulty, workload and other objective criteria. In relation to the tariff groups thus determined, they should then try to negotiate minimum wage tariffs to replace the existing guaranteed wage rates. It can be assumed that this will be a very complicated negotiation, both in technical and substantive terms.

There are several possible objectives in conducting collective bargaining over wages. Of course, the current starting position will always be important. If, for example, collective bargaining on remuneration has so far been rather formal at the employer, as the guaranteed wage has been effectively taken over in the collective agreement, or if remuneration has not been included in the collective agreement at all, it may be possible, for example, to move towards the collective agreement including at least the entitlement wage components (wage tariff). Non-pay components may remain at the unilateral discretion of the employer, i.e. regulated in an internal wage regulation to be negotiated with the trade union.

In other cases, where the employer has established a functional remuneration system, only wage increases are subject to negotiation. The percentage by which employees' wages will be increased is therefore

being negotiated, with the parties assuming that the current system of wage rates linked to individual occupations will remain. In these cases, attention should be paid to how the employer's obligation to increase employees' wages is formulated. There is a big difference between an employer committing to a wage increase, increasing the average wage or increasing the wage of every employee who falls into a certain occupational category.

In the case of wage-earning employers, it is also possible to negotiate an increase in fringe benefits, which are only regulated by the Labour Code in a minimum amount. Typically, there are arrangements to increase the premium for night work or for work on Saturdays and Sundays. The overtime premium may also be increased, or it may be agreed that a higher overtime premium will be applied if the overtime is worked on a Saturday or Sunday. Some collective agreements also include additional payments that are not even mentioned in the Labour Code, such as shift premium, or afternoon shift premium.

3.4.3. Remuneration system and collective bargaining

If an employer does not yet have a functional and accessible remuneration system, union negotiators should start preparing for the upcoming changes in legislation that will oblige employers to develop a remuneration system based on the requirements of the Transparent Remuneration Directive. Trade unions should treat this news as an opportunity and should not accept that the employer will only discuss the remuneration system with them.

Employee representatives should seek to participate in the development of the employer's remuneration system and contribute to the adoption of this instrument to ensure that it is fit for purpose. Optimally, the remuneration system should help enforce the principle of equal pay for equal work, cultivate the overall environment at the employer and ultimately improve the status of employees.

4. Flexible forms of employment

The Czech labour law environment is influenced by a number of factors that are leading to an increase in the popularity of flexible forms of employment. Examples include the economic crisis and the increased tendency of employers to seek savings in personnel and operating costs, the dynamic development of technologies that enable the efficient performance of a wide range of professions without the need to be tied to a specific place or space, the increasing emphasis on the best possible reconciliation of employees' private (family) and working lives, or the COVID-19 disease pandemic and the forced introduction of remote forms of work, this time mainly to ensure the protection of the health of employees and other persons.

This is also why new approaches to the organisation of the work process are increasingly being promoted, which by their nature more or less depart from "standard employment", which is still considered to be an open-ended employment relationship with fixed weekly working hours (full-time)[68], in which the employee performs work at the employer's workplace during the working hours scheduled by the employer. The growing popularity of non-traditional forms of work in the European Union is also illustrated by statistics compiled by the European Commission[69].

Although new trends in work organisation have recently been the subject of frequent professional discussions and research at national and transnational level, the notion of "new", "non-traditional" or "flexible forms of employment" is still not fully clarified or is used in different senses. This is also confirmed by the European Foundation for the Improvement of Living and Working Conditions, Eurofound, which on its website describes

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[68] Srov. MUÑOZ DE BUSTILLO LLORENTE, R. Digitalization and social dialogue: Challenges, opportunities and responses. In: VAUGHAN-WHITEHEAD, D. a kol. (eds). *The new world of work: Challenges and opportunities for social partners and labour institutions.* Chaltenhan (Velká Británie): Edward Elgar Publishing, 2021, s. 110. Dostupné z https://www.ilo.org/global/publications/books/WCMS_833561/lang--en/index.htm.

[69] Viz např. EVROPSKÁ KOMISE. Evropské centrum politické strategie. *10 trends shaping the future of work*. Luxemburg: Publikační centrum EU, 2019. Dostupné z: https://data.europa.eu/doi/10.2872/69813.

new forms of employment broadly as an umbrella term for *"more diverse forms of employment characterised by changing working patterns, contractual relationships, places of work, duration and timing of work, and greater use of information and communication technologies or a combination of these characteristics*"[70].

In addition to the more well-known institutes serving to strengthen the flexibility of employee-employer cooperation in the employment law regime (e.g., telework or shared workplace), forms of cooperation that are specific in their setup to such an extent that their legal nature as an employment or other relationship is (at least for the time being) unclear - e.g., work through platforms (see below) or various specific forms of cooperation between entrepreneurs (self-employed persons), which in their setting go beyond the traditional concept of relations between business partners.[71]

Flexible forms of employment are also addressed by the European Union in the implementation of its policies, which seek to strike a balance between preserving their advantages and ensuring adequate working conditions or applying instruments to prevent new forms of employment from being less favourable to workers than more conventional types of employment.[72]

In 2017, the European Commission, the European Parliament and the Council announced the European Pillar of Social Rights, which sets out 20 guiding principles that are important for well-functioning labour markets[73]. The related 2021 Action Plan states that digitalisation and the changes that the pandemic has brought to the world of work require a broad policy

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[70] EUROFOUND. *Nové formy zaměstnávání* [online]. https://www.eurofound.europa.eu/cs/topic/nove-formy-zamestnavani.
[71] EUROFOUND. *New forms of employment: 2020 update*. Luxemburg: Publikační centrum EU, 2020, s. 4-5. Dostupné z: https://www.eurofound.europa.eu/en/publications/2020/new-forms-employment-2020-update.
[72] EUROFOUND. *Nové formy zaměstnávání*, op. cit.
[73] Tamtéž.

debate that focuses not only on labour market participation rates but also on adequate working conditions that support quality jobs[74].

With regard to the current legislative activity of the European Union aimed at ensuring adequate working conditions for people working in flexible forms of employment or effective reconciliation of work and personal life, the following two directives can be mentioned first of all - Directive (EU) 2019/1152 of the European Parliament and of the Council of 20. June 2019 on transparent and predictable working conditions in the European Union, and Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU. Both directives were transposed into the Czech legal system by Act No. 281/2023 Sb., amending the Labour Code and certain other acts, which entered into force in majority on 1 October 2023 (in the following as "Flexible Amendment to the Labour Code 2023").

At the time of the study, the EU Directive on improving working conditions at work through digital labour platforms, which according to the draft Directive means any natural or legal person providing a service that meets all these requirements, was also at an advanced stage of preparation: (a) it is at least partly provided remotely by electronic means such as websites or mobile applications; (b) it is provided at the request of the recipient of the service; (c) it includes as a necessary and essential component the organisation of work performed by persons for remuneration, regardless of whether that work is performed online or at a specific location; (d) it includes the use of automated monitoring or decision-making systems[75]. According to its Article 1, the Directive aims at introducing measures to facilitate the correct determination of the employment status of persons

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[74] EVROPSKÁ KOMISE. *Sdělení Komise Evropskému parlamentu, Radě, Evropskému hospodářskému a sociálnímu výboru a Výboru regionů – Akční plán pro evropský pilíř sociálních práv,* [COM (2021)102], bod 3.1. Dostupné z: https://eur-lex.europa.eu/legal-content/CS/ALL/?uri=COM:2021:102:FIN.

[75] Viz EVROPSKÁ KOMISE. Návrh směrnice Evropského parlamentu a Rady o zlepšení pracovních podmínek při práci prostřednictvím platforem ze dne 8. 3. 2024, interinstitucionální spis 2021/0414(COD), čl. 2. Dostupné z: https://data.consilium.europa.eu/doc/document/ST-7212-2024-ADD-1/cs/pdf.

performing work through platforms (the purpose of which is to establish a presumption of the existence of an employment relationship), to promote transparency, fairness, human supervision, safety and accountability in the algorithmic management of work through platforms, and to improve the transparency of work through platforms, including in cross-border situations.

Furthermore, the preparation of European legislation on fair teleworking and the right of employees to disconnect, the first phase of which was launched by the European Commission at the request of the European Parliament in 2024, is certainly relevant in the area under discussion[76]. The issue of the right to disconnect is also addressed in the European Social Partners' Framework Agreement on Digitalisation of June 2020 (hereafter referred to as the "EU Digital Framework Agreement"), which, while not binding on Member States, sets out recommendations and priorities in the field of digital work that social partners should promote (e.g. in collective bargaining).

As far as the Czech labour law is concerned, the Labour Code explicitly regulates several "tools" or forms of organisation of the labour process, which can be described as flexible compared to the conditions of a "classic employment relationship", e.g. due to a different (freer) approach to the planning of the time of work performance or to the determination of the place where the employee performs his/her work tasks. A typical example of this is the performance of remote work, i.e., from a place other than the employer's workplace, which is specifically regulated in Section 317 and Section 190a of the Labour Code. Also relevant is the shared workplace, regulated in Section 317a of the Labour Code, in which multiple employees in a shared position schedule and delegate work by agreement. In the field of scheduling working time, flexible scheduling with basic and optional working time periods (Section 85 of the Labour Code) or a working time

[76] Viz EVROPSKÁ KOMISE. *Komise zahajuje první fázi konzultace se sociálními partnery o spravedlivé práci na dálku a právu odpojit se* [online]. 2024. https://ec.europa.eu/commission/presscorner/detail/cs/ip_24_1363.

account (Sections 86 and 87 of the Labour Code) can also be considered flexible tools.

Flexible forms of employment are also perceived as relationships based on agreements on work performed outside the employment relationship (Contract for work CfW and Contract for activity performance CfAP), which are characterized by a looser legal regulation compared to the employment relationship, providing more room for contractual adjustment of the relationship, and the resulting fundamentally reduced level of protection of the employee (e.g. in the field of termination of the relationship or guarantee of work assignment[77]) - see in particular Sections 74 to 77 of the Labour Code.

An important institution in the context under discussion is also agency employment, characterised by a tripartite relationship involving the employment agency, the employee and the user for whom the employee performs work on the basis of a temporary assignment by the agency (see in particular Sections 307a to 309a of the Labour Code). The flexibility of the work arrangement in question also goes hand in hand with a reduced level of protection for the employee (e.g. in the field of termination of the temporary assignment with the user and thus of the employment relationship with the agency).

Relevant forthcoming legislative changes should also be taken into account, of which we can point in particular to the forthcoming introduction of the so-called "self-scheduling of working time", i.e. a solution in which the employee himself or herself schedules the working time according to an agreement with the employer. The proposal for this institute to be enshrined in the new Section 87a of the Labour Code was primarily part of the Flexible Amendment proposal of the Labour Code with planned effect from 1 January 2025. However, it seems that the regulation in question will be introduced much sooner, as it has been included in another forthcoming

[77] Blíže viz KADLUBIEC, V. Současné změny regulace vztahů z dohod o pracích konaných mimo pracovní poměr jako brána k nelegální práci? *Právní rozhledy*. C.H. Beck: 2024, č. 1-2, s. 13-23.

amendment, the draft transposing amendment to the Labour Code 2024. The law is proposed to take effect on the first day of the calendar month following its promulgation, which is likely to be during the 2024 summer recess.

As also confirmed by the results of Trexima's surveys discussed below, the area of flexible forms of employment, especially as regards their implementation by employers and the protection of employees' rights when using them, is perceived by employees as an important topic for collective bargaining. Since the area of regulation is characterised by a lower standard of minimum legal guarantees in certain places (e.g. with regard to the reimbursement of costs related to telework or travel expenses in the context of a CfW or CfAP relationship), collective bargaining can also serve as an effective tool for ensuring favourable working conditions for employees, taking into account the specific circumstances of the employer.

In the following subsection, the results of surveys on the issue of flexible forms of employment and its resolution in the context of collective bargaining will be discussed in more detail. The next part of the text will be devoted to selected key aspects of the legal regulation of flexible forms of employment, focusing on their "typical representative" - telework, the regulation of which has been significantly affected by the amendment to the Labour Code 2023. The analysis of the legislation will serve as a basis for the specific recommendations for collective bargaining contained in the last part of the chapter.

4.1. Surveys on flexible forms of employment

The results of the surveys conducted by Trexima show that the area of flexible forms of employment occupies an important position in the eyes of the respondents in terms of the desired targeting of trade union activity and collective bargaining. According to the 2023 survey *"New Trends in Trade Union Activity and Collective Bargaining on the Future of Collective*

Bargaining"[78], the vast majority of respondents strongly (41%) or somewhat (40%) agree with the statement that unions should focus on promoting new forms of employment. Only 6% of the employees surveyed disagree somewhat (5%) or strongly (1%), and the remaining 13% of respondents have no clear opinion on the accuracy of the statement.

Another survey entitled *"Collective bargaining in times of economic stagnation and rising unemployment*"[79], carried out in 2022, addresses, among other things, the importance of addressing favourable conditions for the use of flexible forms of work in collective bargaining. A total of 77% of respondents perceived the topic as important, of which 44% perceived it as somewhat important and 29% as definitely important. For the remaining part of the employees surveyed, the topic is rather (22%) or not at all (4%) important. The survey also shows that, in terms of gender, a higher proportion of women (32%) than men (23%) consider the protection of working conditions in the context of flexible forms of employment to be very important, which may also be related to the higher proportion of women who deal more intensively with the issue of reconciling work and family life.

Overall, 54% of respondents to the same survey said they were satisfied with collective bargaining in the area, but the majority of respondents (50%) were somewhat satisfied and only 4% were very satisfied. Almost half of the respondents (45%) are dissatisfied, 11% very dissatisfied. In the gender comparison, it is interesting to note the higher proportion of dissatisfied women (17% very dissatisfied and 36% somewhat dissatisfied) than men (2% very dissatisfied and 2% somewhat dissatisfied).

Although the two surveys do not focus on specific measures that trade unions should promote in collective bargaining, it can be inferred from them that both the introduction of flexible forms of employment

[78] Celý průzkum dostupný z: https://www.asocr.cz/obsah/66/informace-k-projektu-aso-budoucnost-kolektivniho-vyjednavani/333406.
[79] Celý průzkum dostupný z: https://www.asocr.cz/obsah/67/aso-v%C2%A0roce-2022-realizovala-projekt-pod%C2%A0nazvem-podpora-och/330665.

(presumably perceived as providing employees with a greater degree of autonomy in their work and enabling a better reconciliation of private and working life) and the provision of adequate (favourable) working conditions in the context of the application of these forms of work organisation are generally important for employees. Respondents' answers on satisfaction with collective bargaining show quite a lot of room for improvement.

Trexima also conducted a survey in 2022 looking in more detail at 7 new forms of employment as classified by Eurofound[80] - mobile working, job sharing, employee sharing, platform working, casual working, voucher based working and collaborative working81. Employees were asked about their awareness of these forms of employment and their own experience of using them, their advantages and disadvantages, their motivation to use them and the potential for using these specific solutions in the jobs of the employees interviewed.

Respondents are generally less aware of mobile working, which is defined for the purposes of the survey as work in which employees can *work anytime and anywhere (most often from home) with the support of modern technologies*. 75% of employees surveyed have encountered or heard of mobile working, with the majority of respondents (21%) also having direct experience of mobile working. As for other new forms of employment, while the majority of employees interviewed are aware of some of them (job sharing - 54%, casual work - 54%), the personal experience is less than 10% for none of them. This is also why we decided to focus the analysis of the next part of the survey results, as well as the analysis of the legislation and proposals for collective bargaining, on mobile work, or (in the words of the Labour Code) telework.

According to 92% of respondents, the biggest advantage of this form of employment is the reduction of costs (e.g. commuting costs). In total, 81% of respondents identified a high level of personal autonomy and time

[80] Viz TREXIMA. Průzkum *Nové formy zaměstnávání, jejich přednosti a nedostatky z pohledu zaměstnance*. 2022. Dostupný z: https://www.asocr.cz/obsah/67/aso-v%C2%A0roce-2022-realizovala-projekt-pod%C2%A0nazvem-podpora-och/330665.
[81] Viz EUROFOUND. *New forms of employment: 2020 update*, op. cit., s. 4-5.

flexibility as an advantage, and 78% of respondents identified the use of information and communication technologies at work as an advantage. Blurring the boundaries between work and private life was identified as a disadvantage in 65% of cases. At the same time, however, 35% rate this aspect of mobile working as rather or definitely advantageous.

Regarding the factors motivating the use of new forms of employment, and thus mobile working, respondents are most likely to consider the ability to better combine work and personal life (51%), time savings (48%), increased income (46%) and greater flexibility (44%).

Of the 19% of respondents who answered positively to the question of whether there is potential for new forms of employment in their jobs within 3 years, 74% indicated that mobile working was a possible option.

As the survey asked employees about more specific aspects of mobile working, of which the vast majority of respondents have an awareness and around a fifth also have personal experience, it is also possible to draw more specific and compelling conclusions from the results towards other parts of this study.

From a legal point of view, it is worth noting that the survey was conducted before the adoption of the 2023 amendment to the Labour Code, which regulated some aspects of teleworking in more detail, for example, as regards its implementation or the payment of costs associated with it. However, despite the lack of explicit regulation of employee reimbursement, almost all respondents identified cost savings as a major advantage of this form of employment. The following analysis of the legislation and the proposals for collective bargaining will therefore focus more on this issue.

Time and personal autonomy have also been identified as an advantage of mobile working, which should be discussed first of all from the perspective of the legal regulation of the scheduling of working time and the scope of work performed in the context of teleworking. Greater attention should also be paid to the legal aspects and recommendations

addressing the most frequently mentioned disadvantage of this form of employment, which is the blurring of the boundaries between work and private life. In this respect, the right to disconnect is also relevant, which has not yet been explicitly enshrined in the Czech Republic or at the EU level, but can be addressed, for example, through collective bargaining.

4.2. Legal regulation of teleworking

Various terms are used to describe work outside the employer's workplace, such as *home office*, *homeworking* or *teleworking*. Despite the partial differences in the meaning of these terms, this distinction is not crucial for the purposes of further interpretation. In the following, the term introduced into the legislation as of 1 October 2023 by the amendment to the Labour Code 2023 will be used collectively, i.e. *telework*, which according to Section 190a(1) of the Labour Code is generally understood as "*the performance of work from a place agreed with the employer other than the employer's workplace pursuant to Section 317"* of the Labour Code. Telework therefore includes all forms of work performed outside the employer's premises at another agreed location, which need not be the employee's home.

This form of employment is addressed in particular by a special regulation in Section 317 of the Labour Code, which was supplemented by the amendment to the Labour Code in 2023, which also introduced a new Section 190a dealing primarily with the issue of reimbursement of the employee's expenses related to the performance of telework.

Outside the areas covered by the strict special rules, all general employment law applies to the performance of telework, including areas which are very difficult to apply given the specificities of the form of employment (in particular the reduced level of possible supervision and control by the employer). A typical example of the above is the area of legal regulation of OSH, which, however, will not be the focus of this study.

Transnational teleworking is addressed, for example, in the Framework Agreement on Teleworking of 16 July 2002 concluded by the social partners - representatives of employers and employees - at EU level (in the following as "EU Telework Framework Agreement"). Although the agreement in question is not in the nature of an EU legal act directly binding in the Member States (as a Regulation) or compulsorily implemented by national legislation (as a Directive)[82], it does contain a definition of certain basic rules (principles) which should be respected in teleworking (here explicitly only in the form of teleworking - using information and communication technologies) and which should be enforced in the Member States by the social partners there in the framework of social dialogue and collective bargaining.

The EU Framework Agreement on teleworking is structured into 12 points, which cover the introduction of teleworking on a voluntary basis, conditions of employment (from an equal treatment perspective), data protection, employee privacy, provision of equipment and reimbursement of work-related costs by the employer, health and safety at work, organisation of work, education and training, collective rights of workers and implementation of the agreement. Most of the general rules under the framework agreement can also be directly or indirectly derived from Czech law, but there are also differences, e.g. in the field of reimbursement of costs related to telework (see below).

4.2.1. The introduction of telework and the request of specific groups of employees

The possibility of teleworking in real life depends on a number of factors on both sides of the employment relationship - the nature of the work, technical equipment, the employee's capabilities (availability of suitable premises), etc. Therefore, according to Section 317 of the Labour Code,

[82] Blíže viz např. HEPPNEROVÁ, D. K navrhované novelizaci pravidel práce z domova. In: GREGOROVÁ, Z. (ed.). *Pracovní právo 2016. Zákoník práce v novelizaci, důchodová reforma v akci*. Brno: Masarykova univerzita, 2017. s. 175-184.

except in exceptional cases, it is necessary for the employer and the employee to agree in writing on the introduction of remote working, either at the time of establishing the employment relationship (e.g. in the employment contract, in the CfW or CfAP) or during the course of the employment relationship.[83]

Following the experience with the COVID-19 disease pandemic, as of 1 October 2023, the employer's right to order an employee to perform remote work was enshrined in Section 317(3) of the Labour Code, but only in exceptional cases where this is permitted/ordered by a measure of a public authority (e.g. a government emergency measure or an emergency measure of the Ministry of Health, etc.) under another law. However, such an order is only possible if the nature of the employee's work allows it, only for the necessary period of time, and only if the employee has a suitable "remote workplace".

Apart from the above-mentioned emergency situations, an employee cannot be ordered to perform remote work by means of a collective or individual instruction from the employer, even in a limited scope (e.g. two days a week). Similarly, a provision in a collective bargaining agreement cannot serve as a legal title for the performance of telework in itself - it must always be an individual agreement between the individual employee and the employer, for which the law requires a mandatory written form.

As of 1 October 2023, Section 241a of the Labour Code also explicitly authorises specified employees to request in writing to their employer under a special regime to allow them to telework (e.g. for a certain period of time) due to their specific situation. It is specifically about

- a pregnant employee,

[83] Výjimka platí pro pedagogické a akademické pracovníky, kteří většinově přímo dle zvláštních zákonů vykonávají práci na místě, které si sami určí. Viz § 22a zákona č. 563/2004 Sb., o pedagogických pracovnicích a o změně některých zákonů, ve znění pozdějších předpisů (dále jako „zákon o pedagogických pracovnících“), a § 70a zákona č. 111/1998 Sb., o vysokých školách, ve znění pozdějších předpisů (dále jako „zákon o vysokých školách“).

- an employee caring for a child under the age of 9 and
- an employee who predominantly cares for a person who is considered to be dependent on the assistance of another natural person in Grade II (moderate dependence), Grade III (severe dependence) or Grade IV (total dependence).

The employer (unlike the originally proposed version of the regulation) retains the option to decide whether to comply with the request (and conclude a telework agreement with the employee) - it is not a "request for entitlement", but in case of refusal, the law requires the employer to justify its position in writing to the employee.

4.2.2. Unbundling of a telework agreement

As of 1 October 2023, the Labour Code also explicitly provides for the possibility of termination of the telework agreement, which leads to the reactivation of the work performance regime at the employer's workplace. The obligation may be terminated by written agreement between the employee and the employer on an agreed date, or by written notice to either party, for any reason or no reason, with a 15-day notice period beginning on the date on which the notice is delivered to the other party.

It is permissible to agree both on a different notice period (however, always the same length for both the employee and the employer) and on the non-terminability of the obligation under the agreement, i.e. a solution where neither party can unilaterally terminate the telework during the course of the agreement.

If the employer fails to fulfil any obligation relating to the unbundling of a telework agreement and the procedure for ordering such work, he or she is liable to a fine of up to CZK 300,000 under Sections 12a and 25a of the Labour Inspection Act.

4.2.3. Modification of the conditions for teleworking (in general)

It is common to encounter a practice where the parties regulate the performance of telework in a combination of different documents - in an employment contract (CfW or CfAP), in a separate agreement and in a collective management act (e.g. called an internal regulation or directive), or in a collective agreement.

This combination of "sources of regulation" is legally possible, and in most cases even appropriate, but only if the established requirements regarding the possible content of the collective agreement and the employer's collective management acts are respected. In this respect, it is necessary to take into account the basic rules according to which the acts in question cannot reduce the level of protection of employees below the legal level, nor can they impose (new) obligations on employees, i.e. obligations that do not have their basis in legislation (do not derive from the Labour Code or other laws).

Therefore, it must never be the case that a collective agreement or collective management act provides employees with fewer rights than provided for by law, or more obligations or different obligations than those provided for by the Labour Code or other legislation (these must be dealt with by agreement between the parties within the limits of the law). If such an overstepping of the statutory framework of obligations had nevertheless occurred, the acts in question would have been only apparent in the part in question - they would not have been taken into account.

As far as the regulation of the conditions of remote working by means of a collective instruction is concerned, it is therefore possible rather marginally, especially as regards the elaboration of already existing legal obligations into more specific rules affecting the employee and his remote workplace - e.g. as regards more detailed conditions in the field of ensuring occupational health and safety (with the support of Section 101 et seq. of the Labour Code, etc.) or the protection of the employer's property and data processed and sent by means of remote communication (with the

support of Section 249 of the Labour Code - the preventive obligation, etc.).

A collective agreement or internal regulation may then grant (new) rights to employees more favourably than the law provides, for example, in the area of assessing requests to telework or paying the costs associated with telework (see below).

It is also important to bear in mind that general requirements, e.g. in the field of non-discrimination and equal treatment, must be complied with: contractual or contractual agreements and provisions in collective guidelines or collective agreements must not put teleworkers at any disadvantage compared to other employees, nor, on the contrary, must they favour them (e.g. with regard to the provision of employment benefits), unless there are justifiable reasons for doing so, and this also applies, mutatis mutandis, for the purposes of comparing the conditions of individual teleworkers with each other.

4.2.4. Scheduling of working time and scope of work

Under the prescribed legal regime, the parties may decide which "variant" of telework they choose, e.g. in terms of the location of the remote workplace (only the employee's residence or a wider area) or the extent of the work performed outside the employer's workplace - exceptionally on the basis of an ad hoc request by the employee (a kind of employment benefit) or on a regular basis (combined form or exclusive telework). Although the choice of a particular variant will usually also fundamentally influence the parties' approach to the scope and content of the adopted regulation of the conditions of telework, the law does not differentiate between them and chooses a different differentiating criterion in terms of the application of the special regulation based on who schedules the employee's working time.

In the case of telework, the legislation explicitly allows the parties to transfer the right (and obligation) to schedule working time from the employer to the employee in the agreement. According to the above-mentioned draft transposition amendment to the Labour Code 2024, this regulation is to be replaced by an across-the-board regulation of the employee's self-scheduling of working time, the introduction of which is henceforth not to be limited to cases of work outside the employer's workplace.

If the employee schedules his/her own working hours according to the agreement, which means that he/she, and not the employer, determines the beginning and end of the periods designated for the performance of work in the context of remote work, the specific rules contained in Section 317(4) of the Labour Code apply under the current regulation, according to which

- the legislation on the employer's working time, downtime and interruptions caused by adverse weather conditions (however, the length of a shift may not exceed 12 hours) does not apply,
- in the event of other important personal obstacles at work, the employee is not entitled to compensation for wages or salary, unless otherwise provided for in Government Regulation No. 590/2006 Sb., establishing the scope and extent of other important personal obstacles at work, as amended.
- for the purposes of providing compensation for wages, salary or remuneration under the agreement during temporary incapacity for work and quarantine and for the purposes of taking leave, the fixed shift patterns which the employer is obliged to determine in advance for these purposes shall apply. If the employer fails to set a fictitious shift schedule for the employee, the employer is liable to a fine of up to CZK 300,000 under Sections 12a and 25a of the Labour Inspection Code.

As of 1 October 2023, the Labour Code does not exclude the application of the regulation of overtime and public holiday benefits - extra pay / compensatory time off - for the teleworking scheme.

Both under the current regulation and under the forthcoming regulation of self-scheduling of working time, it is possible for the parties to set certain conditions and restrictions in the field of scheduling of working time by the employee - e.g. the impossibility to schedule shifts for so-called "extra time" (weekends, nights, etc.).

It is also up to the agreement of the parties whether the employee will be obliged to send the employer the drafted shift schedule in advance (e.g. for each working week) or whether the working time will be scheduled *"ad hoc"* within individual days and hours without prior communication of the shift schedule to the employer. The latter, however, poses certain risks for both the employer and the employee, who lacks clear limits on the duration of his or her duties due to the absence of a pre-defined and communicated plan. While this solution generally gives the employee a greater degree of autonomy, it also (somewhat paradoxically) risks worsening the level of work-life balance and increasing the risk of inappropriate "spillover" of professional duties into leisure time. These consequences may be amplified if the employee receives work assignments from the employer with short deadlines for completion, which will in effect severely limit the employee's autonomy in scheduling working time.

In connection with the above, it is also worth mentioning the extent of telework, which, as in the case of work at the employee's place of work, may generally not exceed the established or agreed shorter working hours[84.] Therefore, the employer should also only assign tasks to the teleworker in such quantity, with such difficulty and with such completion dates as to correspond to the relevant scope of the weekly working time. If, however, the employee is required by the employer to work remotely in excess of the fixed weekly working hours he has scheduled because of

[84] Srov. také HEPPNEROVÁ, Denisa. Komentář k § 317 zákoníku práce. In: STRÁNSKÝ, J. a kol. *Zákoník práce s podrobným…*, op. cit., s. 968.

the assignment of a larger amount of work, such work will generally have to be treated as overtime work with the employee's right to wages or salary and additional pay or compensatory time off. Overtime work must also comply with the time limits laid down by law.

To ensure a reasonable workload for teleworkers, employers should pay attention to setting appropriate limits and standards, e.g., setting work pace or work consumption standards under Section 300 of the Labour Code.[85]

Related to the scope of working hours is also the issue of "constant availability of the employee", i.e. the situation where the employer requires the employee to be "on the phone or email" for the purpose of dealing with work matters also during and beyond the scheduled working hours. Although the current wording of the Labour Code makes it inadmissible to enforce the performance of work outside the scheduled working hours if it is not carried out within the framework and limits of the legal regulation of on-call and/or overtime work, this is certainly not a practice that is unique, which is also indirectly confirmed by the results of a survey conducted by Eurofound, according to which up to 27% of employees working remotely on a regular basis carry out work in their free time every day or several times a week[86.] This is also the reason why legislation is being prepared at European level to address the right of employees to disconnect, which is still lacking in the Czech Republic.

It should also be stressed that the delegation of the scheduling of working time to the employee does not relieve the employer of the responsibility for compliance with the legal regulation of working time and rest periods, for example, as regards the provision of meal and rest breaks or continuous daily and weekly rest periods. These matters should therefore be addressed by the parties in the agreement, as should the keeping of time

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[85] Srov. také ŠTEFKO, M. Komentář k § 317 zákoníku práce. In: BĚLINA, M. a kol. *Zákoník práce…*, op. cit., s. 1409.

[86] EUROFOUND. *Telework and ICT-based mobile work: Flexible working in the digital age*. Luxemburg: Publikační centrum EU, 2020, s. 24. Dostupné z: https://www.eurofound.europa.eu/en/publications/2020/telework-and-ict-based-mobile-work-flexible-working-digital-age.

records, which is primarily the responsibility of the employer, but with possible arrangements for the employee to provide the necessary cooperation.

4.2.5. Reimbursement of costs related to teleworking

Another key area of legislation is the issue of reimbursement of costs related to the performance of telework. Although the employees interviewed in these surveys most often cite cost savings (for commuting or meals) as the biggest advantage of teleworking, it cannot be overlooked that working away from the employer's premises also entails additional costs for employees, which are particularly important to address in cases of regular or exclusive teleworking.

As of 1 October 2023, the Labour Code also explicitly regulates in Section 190a the provision of compensation for the employee's costs incurred in connection with the performance of remote work - for electricity, heat, internet connection, etc. The right to compensation for the costs in question is granted by law only to employees in an employment relationship (not to those in relationships under the CfW and CfAP[87]).

For employment relationships, the rule that the employee is entitled to reimbursement of the costs associated with the performance of telework in the amount actually incurred by the employee and demonstrated to the employer by[88] - e.g. by submitting documents containing information on the costs of providing heating to the apartment in which the employee performs telework and identifying the relevant portion of those costs that were incurred in connection with the performance of work for the employer

[87] Viz § 77 odst. 2 písm. f) a § 190a odst. 7 zákoníku práce.

[88] Rovněž na tomto poli platí výjimka pro akademické pracovníky vysokých škol a pro pedagogické pracovníky, u nichž dle zvláštních předpisů platí, že se náklady vynaložené v souvislosti s výkonem práce mimo přímou pedagogickou činnost atd. na jiném místě než na pracovišti zaměstnavatele, nepovažují za náklady vzniklé v souvislosti s výkonem závislé práce, a není-li dohodnuto jinak, hradí je zaměstnanec. Viz § 22a odst. 3 zákona o pedagogických pracovnících a § 70a odst. 3 zák. o vysokých školách.

- for heating during working hours when the employee would not otherwise have heated the apartment, has generally been maintained.

However, quantifying, proving and reimbursing an employee's costs when working remotely is an administratively demanding process that can also cause discrepancies between parties, which led the legislator to explicitly legalize the second solution that was often already used before the amendment to the Labour Code 2023 came into force, i.e. reimbursement of costs related to remote work in the form of a lump sum.

According to the Labour Code, this method of compensation applies if it is agreed in writing (in a collective agreement or in an agreement between the employee and the employer[89]) or if the employer stipulates it in an internal regulation.

The prescribed amount of the lump sum compensation for each hour of teleworking is set by decree of the Ministry of Labour and Social Affairs according to the data published by the Czech Statistical Office on household consumption adjusted for the telework model, always with effect at the beginning of the year in question, and possibly on an extraordinary date during the calendar year if there is an increase or decrease in the value of the said data on household consumption by at least 20% compared to the last announced lump sum.

For the year 2024, the amount of the lump sum compensation per hour is CZK 4.50 according to the Decree of the Ministry of Labour and Social Affairs 397/2023 Sb., on determining the amount of the lump sum compensation for telework. Pursuant to Section 190a(6) of the Labour Code, the lump sum provided to the employee includes reimbursement of all costs incurred in the performance of telework.

According to the interpretation of the Ministry of Labour and Social Affairs, the amount of the lump sum is determined on the basis of the sum of the

[89] Srov. MINISTERSTVO PRÁCE A SOCIÁLNÍCH VĚCÍ. *Příručka pro personální agendu a odměňování zaměstnanců. XXIII. Náhrady nákladů při výkonu práce na dálku.* [online]. 2024. https://ppropo.mpsv.cz/XXIIINahradynakladuprivykonuprac.

hours of telework performed in the relevant period (most often in a calendar month), while the fractions of such hours worked in individual days are not compensated separately but are added together[90].

Employers who remunerate employees with wages may also provide a higher lump sum than the amount set out in the Decree, but they must take into account the rules on taxation of compensation and its subjecting to social security and public health insurance contributions, which, in the case of the use of a lump sum, operate with limits based on the prescribed amount of compensation[91].

Lump sum compensation is payable by law no later than the calendar month following the month in which the employee became entitled to it. So, for example, if an employee performs telework in July, the employer will be obliged to pay the employee a lump sum by the end of August.

In addition to the reimbursement of costs in a proven amount and in the form of a lump sum, a third (and somewhat controversial) option in the area of compensation for costs associated with telework is to exclude it by written agreement of the parties. Thus, although Section 2(2) of the Labour Code stipulates that dependent work must be performed at the employer's expense and Section 346c adds that the employee cannot exempt the employer from the obligation to reimburse the employee for (among other things) expenses incurred by the employee in connection with the performance of work, these general requirements under Section 190a(2) of the Labour Code do not apply to telework. The employee may validly agree with the employer to exclude the provision of compensation for expenses incurred in connection with the performance of (telework) work, without any restriction by the regime of that work.

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[90] Tamtéž.
[91] Viz § 6 odst. 7 písm. d) a e) a odst. 8 a § 24 odst. 2 písm. j) bodu 4 a písm. p) zákona č. 586/1992 Sb., o daních z příjmů, ve znění pozdějších předpisů, § 5 odst. 1 zákona č. 589/1992 Sb., o pojistném na sociální zabezpečení a příspěvku na státní politiku zaměstnanosti, ve znění pozdějších předpisů, a § 3 odst. 1 zákona č. 592/1992 Sb., o pojistném na veřejné zdravotní pojištění, ve znění pozdějších předpisů.

Thus, reimbursement of costs can be excluded both in the case of teleworking conceived as a benefit provided to the employee occasionally and at his/her request, and in cases where the employee performs the work regularly or exclusively at another agreed location, which goes against the basic rule set out in point 7 of the EU Framework Agreement on Teleworking, which provides, inter alia, that in the case of telework carried out on a regular basis, the *employer shall compensate or reimburse the costs directly related to the work, in particular those related to communication*. However, as noted above, this Framework Agreement is not directly binding on Member States - it is envisaged that the social partners will be active in enforcing the requirements.

The exclusion of reimbursement must always be agreed individually and in writing with each individual employee in advance, i.e. before the commencement of telework for which the employee is no longer entitled to reimbursement. Therefore, it is not possible to exclude the provision of reimbursement of expenses related to telework, for example, in a collective act of the employer's proceedings devoted to this form of work.

4.2.6. Compensation for wear and tear on the employee's own equipment

In addition to the regulation of compensation for costs associated with telework, this mode of work is also affected by the legal regulation of compensation for wear and tear of the employee's own tools, equipment or other items necessary for the performance of the employee's work, contained in Section 190 of the Labour Code, which, according to the explicit reference in Section 190a(1) of the Labour Code, is not affected by the regulation of compensation for costs associated with telework.

If we further take into account the basic rule of the employment law, according to which the costs of performing dependent work are borne by the employer, as well as the fact that the legislation does not provide for a list of expenses considered as costs related to the performance of remote

work within the meaning of Section 190a of the Labour Code, the question arises as to which expenses fall into this category, i.e. The question of whether these are only expenses for the operation and maintenance of the premises in which the employee performs work (in the case of telework, e.g. rent, electricity, gas, water consumption, or internet connection), etc, or whether it also includes the cost of the acquisition and wear and tear of the employee's own equipment (typically a computer or telephone) and other items (desk, chair, etc.) which are not provided by the employer but are necessary for the performance of the work.

Also in view of the explicit statutory reference to the fact that the application of Section 190 of the Labour Code is not excluded, as well as in view of the determination of the amount of the lump sum according to the data on the consumption of one adult in an average household, which logically does not include the cost of acquiring the equipment necessary for the performance of work, the first variant of interpretation appears to be correct, even though the legislator also enshrined in Section 190(6) of the Labour Code a rule according to which the lump sum includes reimbursement of all costs incurred by the employee in the performance of telework could argue in favour of the opposite interpretation.

In the opinion of the author of the study, the arguments for the conclusion that the employer should deal separately with the reimbursement of costs related to the performance of remote work - heating, electricity, water supply, etc. (perhaps by excluding it or by paying it as a lump sum) and separately also with the reimbursement of expenses for the acquisition and wear and tear of the employee's own equipment, tools or other items under Section 190 of the Labour Code[92], which will again be particularly important for employees who work remotely on a regular or exclusive basis.

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[92] Srov. také ŠTEFKO, Martin.KO, Martin. Komentář k § 317 zákoníku práce. In: BĚLINA, M. a kol. *Zákoník práce…*, op. cit., s. 1410.

4.3. Trade union involvement, recommendations and challenges for collective bargaining

As it follows from the presented analysis of the legal regulation of flexible forms of employment, which also focuses on the issue of teleworking in view of the results of the surveys carried out, this area of regulation provides considerable scope for resolving decisive issues through collective bargaining, both in the field of introducing a given form of work performance and in terms of ensuring adequate working conditions for employees, for example in the area of the scope of work performed or the payment of costs related to the performance of telework. The following passage of the study is devoted to the selected solutions.

4.3.1. Introducing teleworking taking into account the situation of employees

As stated in the interpretation of the telework agreement, the employer is not obliged by law to comply with the employee's request to allow the employee to work in this form, even if the employee is in a specific situation (e.g. with caring responsibilities). Only for employees listed in Section 241a of the Labour Code (pregnancy, care of a child under 9 years of age, etc.) is the employer obliged to justify in writing the refusal of the request to allow telework.

The results of Trexima's surveys showed that the introduction of flexible forms of employment should be a priority in terms of trade union activity, and that this topic is emphasised more by women, who are more likely to combine caring and other private responsibilities with work duties.

In view of this, it can be recommended for the area of collective bargaining that trade unions should promote in collective agreements a clear regulation of employers' procedures for deciding on employees' requests for teleworking. The establishment of transparent rules is also appropriate

in view of the general legal requirement to ensure equal treatment and respect for the prohibition of discrimination.

The specific form of the regulation in question may vary. For example, it is conceivable that a collective agreement, along the lines of the original draft amendment to the Labour Code 2023, would provide for certain groups of employees (e.g. as defined in Section 241a of the Labour Code) to request teleworking as an entitlement, i.e. it would provide for the right of employees whose job position allows it to have their request granted, unless serious operational reasons on the part of the employer prevent this. The regulation in question may also define additional conditions, e.g. to set a maximum period of time for which telework in the form of an entitlement may be requested and for which an agreement with the employee will subsequently be concluded, or a maximum required extent of telework (e.g. by means of the number of days in a week or part-time work).

It is also possible to choose a variant of the application assessment regulation that will be generally more acceptable (less strict) for employers, as it will not be based on the eligibility of employee applications, but on a more general regulation of transparent rules for their assessment, i.e. on setting general conditions for the assessment of applications and defining the factors to be taken into account separately on the employer's side (operating conditions in the given departments/positions, necessary provision of cooperation with other employees at the workplace, etc.) and on the employee's side (caring responsibilities, health difficulties, etc.).

It is also appropriate to seek to go beyond Section 241a of the Labour Code to enforce a blanket right for all employees to receive a written response in the event of a refusal of a request to telework, including a statement of the employer's reasons for doing so.

4.3.2. Scope of working time and right to be disconnected

The surveys conducted by Trexima also showed that a large number of employees perceived a major risk associated with teleworking, i.e. the threat of blurring the boundaries between private and professional life, which, in conjunction with the frequent requirement for permanent availability of employees, leads to a feeling of constant "vigilance", and often also to work outside the scheduled working hours and beyond the legal limits of working time.

This risk is particularly relevant for employees who telework regularly - for example, according to Eurofound surveys, they are more than twice as likely to work longer than the maximum working hours compared to casual teleworkers[93].

The consequence of the described condition can be, first of all, the suppression of the core advantage of teleworking, which is the possibility of a better work-life balance, but also health problems such as cognitive and emotional overload, headaches, sleep deprivation, anxiety or burnout syndrome[94.]

This is also why trade unions working for employers whose employees regularly work remotely should work to promote measures aimed at preventing overwork for these employees.

In this respect, it is recommended, for example, to establish transparent and specific conditions for the standardisation of telework and for determining the amount of work to be done, either directly in the collective agreement or at least in the employer's collective management act, depending on the circumstances. In addition to the limits resulting from the legal regulation of working time and rest periods, the conditions should reflect the requirement set out in Section 300 of the Labour Code and take into account the physiological and neuropsychological capabilities of the

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[93] EUROFOUND. *Telework and ICT-based mobile work: Flexible working in the digital age*, op. cit.

[94] EVROPSKÝ PARLAMENT*. Právo odpojit se od práce by mělo být zabezpečené v celé EU, požadují poslanci*. [onlin 2021. https://www.europarl.europa.eu/topics/cs/article/20210121STO96103/pravo-odpojit-se-od-prace-by-melo-byt-zabezpecene-v-cele-eu-pozaduji-poslanci.

employee, the regulations for ensuring OSH, as well as time for natural needs, meals and rest. In basic terms, the average employee and the average time required to process a particular task can be used to determine the permissible amount of work.

It can also be recommended that the set conditions of cooperation should also address situations where an employee assesses the assigned tasks (according to their quantity, etc.) as impossible to perform within the set or agreed shorter working hours - e.g. the obligation to report the situation to the supervisor in order to agree on further action.

In line with the recommendations flowing from the EU Framework Agreement on Digitalisation, it can also be recommended that trade unions should advocate in collective bargaining for the enshrinement of an employee's right to disconnect, i.e. the right to switch off and not to use information, communication and other means to perform work outside scheduled working hours or outside on-call time or ordered or agreed overtime.

An example of a possible formulation of the regulation in a collective agreement is the Slovak legislation contained in Section 52(10) of Act No. 311/2001 Sb., Labour Code, as amended. According to this provision, an employee performing telework has the right not to use the means of work used to perform telework during periods of uninterrupted daily and weekly rest, unless such periods include on-call or overtime work, during holidays, holidays for which the employee's shift is cancelled, and during periods of obstacles to work. The employer may not consider it a breach of duty if the employee refuses to perform the work or comply with the instruction within the time specified in the first sentence.

4.3.3. Reimbursement of costs related to teleworking

Although the employees interviewed in Trexima's surveys identify cost savings as the main advantage of teleworking, it cannot be overlooked that

in the case of regular or exclusive work outside the employer's workplace, the "cost situation" can quite easily turn against the employee, especially if, according to the current wording of the legislation, an agreement on the exclusion of reimbursement of costs related to teleworking is considered.

Trade unions should therefore address the issue of reimbursement of expenses incurred by employees in connection with work outside the employer's workplace in the context of collective bargaining. A somewhat "responsive approach" can be recommended, taking into account the employer's situation and the variability of possible teleworking arrangements - from occasional benefits to permanent forms of work.

Indeed, if the employer only allows employees to telework irregularly on an individual basis, it seems generally acceptable to use an agreement to exclude compensation for telework-related costs, and in most cases, there will be no need to specifically address compensation for the acquisition and wear and tear of the employee's own equipment.

However, where telework is carried out on a regular basis by the employer, the trade union should, in accordance with the EU Framework Agreement on Telework, seek to ensure that the collective agreement enshrines the right of employees to be reimbursed for the costs of the work without the possibility of exclusion. The most feasible way seems to be a flat-rate compensation, possibly increased above the legal limit according to the results of negotiations with the employer.

In particular, the right to the provision of work equipment or to reimbursement of the costs of wear and tear of such equipment acquired by the employee himself should also be addressed in these situations.

First of all, there is the option where the collective agreement enshrines the employee's right to be provided with all the equipment he needs to perform his work given the circumstances (typically computer equipment, office equipment, etc.), which is also in line with the rule contained in point 7 of the EU Framework Agreement on Teleworking, according to which the employer is generally *responsible for providing, installing and maintaining*

the equipment necessary for regular teleworking, unless the teleworker uses his own equipment.

It is also possible for the employee to purchase the equipment needed for remote working. For these cases, the collective agreement should then specify the conditions, amount and method of compensation for wear and tear of this equipment.

5. Conclusion

The aim of this study was to analyse the attitudes of employees resulting from available surveys, to identify and analyse selected areas of legislation that are relevant in the context of the impact of the economic crisis on labour relations, and then, based on the analysis, to formulate recommendations for the involvement of trade unions and measures within collective bargaining that can eliminate or mitigate the negative impacts and contribute to the preservation of social reconciliation.

The study focused on three thematic areas, which included the issue of termination of employment in connection with organisational changes adopted by the employer, the issue of fair remuneration of employees and the application of flexible forms of employment, especially telework.

In the first part of the study, devoted to the issue of termination of employment relationships for organizational reasons on the part of employers and other related issues such as collective redundancies or severance pay, possible recommendations for trade unions were formulated on the basis of an analysis of employee attitudes and legal regulations, which should address, for example, the following in an effort to mitigate the impact of employers' organizational decisions. Promoting transparent and fair procedures for employers in selecting redundant employees for dismissal, increasing severance pay, or being proactive in negotiating organisational measures and subsequent terminations for employees.

The second part of the thesis focused on the issue of fair remuneration of employees. The interpretation was also devoted to the analysis of employee surveys and relevant legislation at the level of the Czech Republic and the European Union. This analysis resulted in recommendations for collective bargaining, according to which trade unions should, among other things, actively prepare for the new European regulation on transparent remuneration. Trade union negotiators should also seek to define the individual tariff groups of employees, divided

according to responsibility, difficulty, workload and other objective criteria, and to set a minimum level of remuneration for these tariff groups instead of the guaranteed wage set out in the legislation that is about to be repealed.

The third part was devoted to flexible forms of employment with a focus on the institute of teleworking, primarily from the perspective of the risks associated with this type of organisation of the work process on the part of employees. The passages on employees' attitudes and the analysis of the legislation were followed by the formulation of possible measures to be enforced in the framework of collective bargaining, e.g. in the field of preventing overworking of employees (establishing rules for determining the amount of work assigned and the right to be disconnected) or ensuring reimbursement of expenses incurred by employees in connection with the performance of their work (establishing the right to a lump-sum reimbursement of expenses related to the performance of telework and rules for reimbursement of expenses for wear and tear on employees' own equipment).

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