

FORMATION AND TRANSFORMATION OF THE EMPLOYMENT CONTRACT IN THE HISTORICAL DEVELOPMENT OF CZECH LABOR LAW UNTIL THE END OF THE 1980S

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Abstract: *The employment contract is the most typical legal fact and a key institution of labor law that leads to the creation of an employment relationship, the main purpose of which is to enable the involvement of individuals in work. For this reason, it can be said that the legal regulation and case law of the courts relating to the essentials of an employment contract will always be a relevant and discussed topic, especially given its importance in everyday lives of many citizens as employees or employers.*

An employment contract is the most common way of establishing an employment relationship, which means that most working individuals will encounter it several times during their lives. This fact emphasizes its fundamental importance.

The aim of this paper is to offer the reader a comprehensive overview of the development of employment contracts in Czech labor law, especially their formation and changes in the historical context from the beginnings to the end of the 20th century. When creating the paper, the authors drew on professional monographs, scholarly articles, and case law dealing with this issue.

Keywords: *employment contract, employment relationship, wage contract, service contract*

INTRODUCTION

The development of labor law and, with it, of employment contract is directly related to the development of economic and social relations and the introduction of new technological elements into production in manufacturing plants and the first factories, but also to the need to regulate labor relations by legal norms. Therefore, the development of labor law is often associated with this social development leading from the end of feudalism to the rise of capitalism, although some roots thereof can already be found in ancient Rome.

However, labor law only achieved fundamental development with the development of the labor movement during the Industrial Revolution. Here, the protective function of labor law comes to the fore, the aim of which is to ensure decent working conditions for employees, determine maximum working hours, rest periods and vacations, and determine the working conditions of women (including pregnant women) and children or youth.

During the period of the socialist experiment, labor law in the Czech lands came under the control of the state, which significantly interfered with its entire conception. Labor law lost its private law nature and strong public law elements emerged therein.

Currently, labor law is facing challenges related to the onset of globalization, pandemics, and the application of modern technologies, as a result of which traditional,

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well-established instruments of labor law, such as the necessity of performing work at the employer's workplace, setting work schedules, or vacation plans, are receding into the background. Labor law will have to respond flexibly to these changes so that it does not – as is sometimes stated in socio-political discussions – become an impediment to economic and social development in this area.

I. BEGINNINGS

Although the article is primarily focused on and discusses the history of employment contract in the Czech lands, we consider it important to make a few general remarks on the beginnings of the development of labor law in ancient times and in ancient Rome. After all, Czech legal tradition is based on and derived from the system of Roman law.

Already in the most ancient societies, in the states that we refer to as *Eastern autocracies*, regulations and rules governing human labor appear. So Sumerian *Lipit-Ishtar laws* contain provisions on hiring of a person for a reward paid in grain (Article 4). *Laws of Eshnunna* also explicitly allow for hiring a wagon with cattle and a driver, again for a reward paid in grain (Article 3). From the above, it is clear that the provisions in question relate to the performance of agricultural work, the importance of which for the society of that time was obvious. This is also confirmed by the *Code of Hammurabi*, which talks about hiring persons who take care of field work, sowing, or livestock (Sections 253 to 256). Furthermore, it discusses shepherds (§ 258) and cattle herders (§ 261). The amount of wages varied depending on the type of work performed, with payment sometimes being made in advance, but mostly only after the work was completed, in cash or in kind. Already at this time, provisions on leave from work appear, usually lasting 3 days. Employment relationships were concluded for both a fixed term and for an indefinite period. In this context, the institution of notice of termination is already known here. If the worker did not start work, he lost his right to wages. Only a free person could be hire and could enter into an employment relationship. In the case of a slave, it was a rental of a chattel.¹

Roman law knew the *locatio conductio* (rent-lease) type of contract comprising essentially three contractual types – *locatio conductio rei* (rent of a chattel), *locatio conductio operis* (contract for work) and *locatio conductio operarum* (employment, service, or wage contract). An employment contract differed from a contract for work in that its subject matter was human work as such, while in a contract for work it was the result of the work that mattered.²

A some provision on performance of work can be encountered in the development of the Czech state already in the Middle Ages, especially in *mining law*, later in *cattleman regulations* and *guild regulations*.

Legal aspects of performance of work were included in *Ius regale montanorum* (Royal Mining Law), the so-called Mining Code of King Wenceslas II from 1300–1305. The Code

¹ KLÍMA, J. *Nejstarší zákony lidstva. Chammurapi a jeho předchůdci. [The oldest laws of mankind. Hammurabi and his predecessors.]*. Prague: Academia, 1979, pp. 226 et seq.

² FALADA, D., STLOUKALOVÁ, K. *Římskoprávní základy úpravy závislé práce. [Roman-Law Basics of the Dependent Labour]*. *Acta Universitatis Carolinae Iuridica*. 2019, Vol. 65, No. 1, p. 12.

contained, *inter alia*, provisions on the length of working hours, dividing the working day into four shifts of six hours each and allowing a maximum of two shifts, which could not follow each other (Book One, Chapter XIX, § 2 and Chapter XIII, § 8). The payment of wages was also regulated here (Book One, Chapter VIII, § 17).³ These provisions had *inter alia* positive impact on the social status of the poorest group of mining workers.⁴ *Ius regale montanorum* recognizes four groups of people involved in mining activities: the first and second groups mainly included superior mining officers and bailiffs, the third comprised entrepreneurs such as primary or secondary miners, landlords of parts of mining fields, and ore purchase traders.⁵ It was the persons of the fourth group, such as windlass workers or workers, who worked in mines on a wage basis, and wage labor was a common form of employment relationship between miners and workers (Book Four, Chapter XVI, § 1).⁶ The Mining Code also contained the first anti-coalition regulations, prohibiting miners from organizing themselves in associations, rules ensuring work safety in mines, etc.⁷ In addition to the aforementioned code, a number of legal customs were in force, in areas not regulated by the Mining Law of Wenceslas II.⁸

The employment contract in the early feudal period, in the period of developed feudalism, and in the period of the estate monarchy was limited only to larger cities, where it took the form of *cattleman*, *journeyman*, and *apprentice contracts*. Already in the Middle Ages, cattleman contracts were concluded, which can be compared to a fixed-term employment contract. They were concluded between the lord and the cattlemen who were usually subordinate subjects (*poddaní*), in general on Saint Martin's Day (11 November) for a period of one year. The conclusion of a cattleman contract was confirmed by providing earnest money to the cattleman, maid, or servant. Remuneration for the work performed was not provided during the agreed period, when the cattlemen usually worked only for food, clothing and accommodation, but in a lump sum after its completion.⁹

As for the cattlemen referred to as itinerant or portal, its labor relations were broadly regulated since the 16th century by parliamentary *cattleman regulations*, which required the submission of the so-called *federal letter*, i.e. a written consent of the nobility to which the subject belonged, in order for the contract to be concluded. The city council could also issue a federal letter, as a recommendation that allowed the wage workers to leave for work or poor people to beg.¹⁰ The issuance of federal letters was also a significant source of income for the nobility or directly for the officials who issued them. They also addressed the impossibility of using old and sick people as labor force; the issuance

³ *Ius regale montanorum aneb Právo královské horníkuov*. Translated from Latin by Petr Přespole in 1460; prepared for publication by Jaroslav Bílek in 2000, Kutná Hora: Kuttna, 2000, p. 10.

⁴ *Ibid.*, p. 11.

⁵ *Ibid.*, p. 18.

⁶ *Ibid.*, p. 78.

⁷ Cf. BĚLINA, M. et al. *Pracovní právo. [Labor Law]*, 7th edition, Prague, C. H. Beck, 2017, p. 19.

⁸ *Ius regale montanorum aneb Právo královské horníkuov*. Translated from Latin by Petr Přespole in 1460; prepared for publication by Jaroslav Bílek in 2000, Kutná Hora: Kuttna, 2000, p. 10.

⁹ BĚLINA, M. et al. *Pracovní právo. [Labor Law]*, 7th edition. p. 19.

¹⁰ VOJTÍŠKOVÁ, J., ŠEBESTA, V. The Hradec Králové city office, especially in the light of direct reports from the local preserved registers from the pre-White Mountain period. *Journal of the National Museum*. 2013, Vol. 182, No. 1–2, p. 31.

of a federal letter ensured their departure from the estate.¹¹ A federal letter could also be obtained by a labor specialist who could not find employment on a given estate. By issuing federal letters the nobility also ensured that the necessary workforce did not leave the estate.¹²

The fulfillment by a cattleman of cattleman contract already concluded could be enforced criminally.¹³ If the cattleman simultaneously concluded a contract with another employer or refused to take up service, he was punished by imprisonment or loss of wages. The cattleman was also subject to the disciplinary authority of the employer for the duration of the cattleman relationship.¹⁴

In 13th – 14th centuries the journeyman and apprentice contracts were regulated by *guild regulations*, these workers therefore belonged to the sphere of guilds. Even though the feudal period saw a partial legal anchoring of employment relations and the creation of labor law institutes – especially contracts that preceded employment contracts – it must be borne in mind that the level of legal regulation was influenced and limited by the existence of serfdom.¹⁵

II. 18TH TO EARLY 20TH CENTURIES

From early 18th century the development of manufacturing plants in the Czech lands faced a shortage of free labor force, as that was tied to feudal estates in the serfdom system. The essence of serfdom lay in the necessity of granting the consent of the lord to ordinary matters of an individual's life, such as moving, education and apprenticeship in a trade, or marriage.¹⁶ In 1781, during the reign of Joseph II, on 1 November, the *Abolition of serfdom* patent was issued. The document clearly shows the influence of Enlightenment philosophy, as its opening statement reads: “*the elimination and elevation of bodily subjection or homagium is implied by common sense, and also by love for neighbor*”. Its Article 1(1) explicitly allows every subordinate subject to marry, paragraph 2 then allows the subordinate subject to leave his current estate and seek service elsewhere, paragraph 3 allows the subject to learn “*at will*” a trade or an art.¹⁷ This patent thus abolished the administrative attachment of subordinate subjects to the land and allowed them to leave for the cities, thereby increasing the volume of free labor force.

Working conditions on estates were regulated, at least in general terms, *corvée patents*. It is worth mentioning, for example, the 1680 *corvée* patent of Emperor Leopold I, accord-

¹¹ GRULICH, J. Motivace migrací a mobility venkovského obyvatelstva na jihu Čech v 17. až 18. století. Člověk a sociální skupina ve společnosti raného novověku. *Opera historica*. 2007, Vol. 12, No. 1, p. 271.

¹² *Ibid.*, p. 263.

¹³ BĚLINA, M. et al. *Pracovní právo. [Labor Law]*, 7th edition. p. 19.

¹⁴ MALÝ, K., et al. *Dějiny českého a československého práva do r. 1945. 4. vydání. [History of Czech and Czechoslovak Law until 1945, 4th edition.]* Prague: Leges, 2010, p. 134.

¹⁵ BĚLINA, M. et al. *Pracovní právo. [Labor Law]*, 7th edition. p. 20.

¹⁶ ŠOUŠA, J. jr. Několik úvah k institutu poddanství a některým dalším právním otázkám z období předosvětského absolutismu. [A few reflections on the institute of serfdom and some other legal issues from the period of pre-Enlightenment absolutism.]. *Právněhistorické studie*. 2017, Vol. 47, No. 2, p. 42.

¹⁷ ADAMOVIČ, K., SOUKUP, L. *Prameny k dějinám práva v českých zemích. 2. upravené vydání. [Sources for the History of Law in the Czech Lands]. 2nd revised ed.* Pilsen: Aleš Čeněk Publishing House, 2010, pp. 168–169.

ing to which corvée was prohibited on Sundays and holidays; where the exact amount of corvée was not determined, it was not allowed to last longer than three days a week. However, in the listed cases, such as during harvest, the subordinate subjects had to perform corvée continuously. This patent was not introduced in Moravia until 1713.¹⁸ This was followed by the corvée patent of Charles VI in 1717, which repeated the principles of the previous patent of Leopold I. The 1717 patent was replaced by a new patent in 1738, according to which the corvée was not to last longer than 10 hours a day. A corvée patent for Silesia was issued in 1771.¹⁹ During the reign of Maria Theresa, a new corvée patent was issued for Bohemia in 1775. In it, the corvée obligation was determined according to the land tax. The hand corvée was divided into seven classes. For example, a hofer in the 1st grade was supposed to perform corvée work 13 days a year. The latter patent was extended to Moravia in the same year.²⁰

In contrast, working conditions in manufacturing plants and newly established factories were essentially left to the discretion of entrepreneurs. It was only at the end of the 18th and beginning of the 19th century that regulations began to be issued to regulate the working conditions of workers, especially working women and children. One regulation to notice especially is the 1842 imperial court decree. This allowed the employment of children from the age of 12, if the child had not attended school at all. If a child had completed at least three years of schooling, they could work from the age of 9. According to this decree, the working hours of children under 12 years of age were limited to 10 hours per day, while children from 12 to 16 years of age could work 12 hours per day.²¹

The first significant legal regulation regulating labor law comprehensively, and thus also the “employment contract” in an almost modern sense, in the Czech lands was the 1811 Austrian General Civil Code (ABGB), where the primary basis for negotiating employment contracts were the provisions contained in Title XXVI “On contracts for remuneration in the case of services and works”,²² which discussed the wage contract. Its provisions included service contract and contract for work. In accordance with this regulation, a wage contract was established when someone undertook to provide services or perform work in exchange for monetary remuneration.

Since the end of the 19th century, the term “employment contract” started to be used in general parlance alongside service contract,²³ based on the Roman *locatio conductio operarum*. However, the content of the service and employment contracts

¹⁸ ČECHURA, J., KÁRNÍK, Z. (eds.). *Antologie studijních textů k novověkým sociálním dějinám. V/1. [Anthology of study texts on modern social history, V/1.]*. Prague: Charles University in Prague, Karolinum Publishing House 2002, p. 85.

¹⁹ *Otto's Educational Dictionary. Twenty-first volume*. Prague: J. Otto, 1904. pp. 865–867.

²⁰ KADLEC, K. *O poddanství a robotě v zemích českých*. Brno: Nákladem Moravské revue. [On serfdom and labor in the Czech lands. Published by Moravian Revue.]. 1899, pp. 33–36.

²¹ KOMENDOVÁ, J. *Veřejnoprávní zásahy státu do právních vztahů vznikajících při výkonu závislé práce. Dny práva 2011 – Days of Law 2011*. Brno: Masarykova univerzita, 2012. In: *law.muni.cz* [online]. [2025-07-10]. Available at: <https://www.law.muni.cz/sborniky/dny_prava_2011/files/prispevky/10%20Ovlivnovani%20sfery/13%20komendova.pdf>.

²² See §§ 1151–1163 of the General Civil Code.

²³ KALENSKÁ, M. *Pracovní poměr v socialistickém právu. [Employment relationship in socialist law.]*. Prague: Academia, 1984, p. 123.

overlapped,²⁴ because in both cases it was a legal title on the basis of which someone undertook to perform work for another for a certain period of time. This bilateral contract also established other rights and obligations of the participants in the legal relationship, as well as working conditions not contradicting labor regulations. Sometimes the term “wage contract” was also used for an employment contract.²⁵ The content of the employment contract was the exchange of labor for wages, or also the *de facto* rental of (labor) services.²⁶

We encounter other statutes regulating employment contracts within the framework of an employment relationship at the beginning of the 20th century. For example, the 1910 Act No. 20/1910 RGBL. on commercial assistants, which included legal regulations on service contracts (§ 6), remuneration (§ 8 et seq.), holidays (§ 17), health protection (§ 18), methods of termination of service (§ 19 et seq.), finding a new job (§ 22 et seq.), the jurisdiction of trade courts to decide disputes (§ 41), etc.²⁷ The law also contained a prohibition on competition and a modification of the competition clause, which, according to § 36, was understood as an agreement that restricted an employee’s gainful activity for a period after the end of his employment relationship. According to § 7(1) of the aforementioned Act, employees were also not allowed to operate an independent merchant business or conduct business in the employer’s business sector on their own account without the employer’s permission. If an employee violated this prohibition, the employer could claim compensation for damages or dismiss the employee early.²⁸

Another example is the 1914 Act No. 15/1914 RGBL. on the service relationship of state officials and state servants, the so-called “Service Pragmatics”, which regulated the employment relationship of state service employees. The law was divided into titles, and the titles into sections. The first title dealt with state officials and set out the qualifications for performing official duties (§ 1 et seq.). The employment relationship was established upon delivery of the establishing decree, unless it explicitly specified another date for the commencement of the employment relationship (§ 7). The term “service time” denoted the actual day of commencement of service (§ 9). Temporary service was understood to mean the service relationship of an official if it was agreed upon subject to dismissal; such a service relationship could then be terminated at any time (§ 10). This was followed by provisions on preparatory service (§ 11), on oath of service (§ 12), and on qualifications of officials (§ 14 et seq.). The second section established the duties of officials, such as service obedience (§ 22), official secrecy (§ 23), conduct (§ 24 et seq.), acceptance of gifts (§ 35), and conditions for performing secondary employment (§ 33). The third section included provisions on the calculation of rights to rank (§ 36) and service order

²⁴ HROMADA, J. *Československé pracovní právo. [Czechoslovak labor law.]* Bratislava: Slovak Publishing House of Political Literature, 1956, p. 8.

²⁵ KALENSKÁ, M. *Pracovní poměr v socialistickém právu. [Employment relationship in socialist law.]* p. 124.

²⁶ *Ibid.*

²⁷ Act No. 20/1910 RGBL., on the service contract of sales assistants and other employees in a similar position (Act on Sales Assistants).

²⁸ ŠIMEČKOVÁ, E. *Právní úprava zákazu konkurenčního jednání za trvání pracovního poměru a po jeho skončení v 1. polovině 20. století. [Legal regulation of the prohibition of competitive conduct during the duration of the employment relationship and after its termination in the first half of the 20th century]. Časopis pro právní vědu a praxi.* 2003, Vol. 11, No. 3, p. 258.

(§ 37 et seq.), official title (§ 40) and uniform (§ 41), leave (§ 42 et seq.) and salary (§ 45 et seq.), and on promotion to higher rank classes (§ 49 et seq.). Section four regulated changes – transfer (§ 67) and transfer to temporary (§ 75 et seq.) or permanent rest (§ 79), and termination of service (§ 84 et seq.). Section five dealt with the disciplinary liability of officials, order maintenance penalties (§ 90 et seq.), disciplinary penalties (§ 93 et seq.) and disciplinary proceedings (§ 112 et seq.). Title two dealt with state servants. Here, the general rule was that the listed provisions of Title one applied analogously to the legal status of servants. The rights and obligations of servants were specifically defined.²⁹

Significant changes in the employment contracts were brought about by the third amendment to the General Civil Code, issued in 1916 and implemented by Imperial Decree No. 69/1916 RGL., issuing the third partial amendment to the general civil code; specifically, §§ 150 to 153 of the imperial decree cited;³⁰ it mainly affected the regulation of the payment of wages and wage compensation in the event of obstacles to work on the employer's part, and it specified notice periods for employees.

According to the amended text of the General Civil Code, the wage contract was explicitly divided into two contractual types, namely a service contract and a contract for work (see section § 1151 On service contract and contract for work). A service contract was established when a person undertook to provide services to another for a certain period of time; if someone undertook to perform a work for a fee, there emerges a contract for work (§ 1151(1)). If no remuneration was specified in the service contract nor was it agreed that the contract is without remuneration, it was considered that the agreed remuneration was “appropriate” (§ 1152). Unless the service contract or circumstances provided otherwise, the employee was obliged to perform the service in person and the entitlement to the services was non-transferable. Unless otherwise agreed, the salary had to be paid after the services were performed (§§ 1153 and 1154).

A significant change with respect to the original regulation, which stipulated that remuneration could only be paid after the end of service, was made possible by allowing salary to be assessed on a monthly or shorter basis. The service relationship ended when the period for which it was agreed expired. The service relationship could also be agreed on a trial basis or only for a period of temporary need. In such cases, the employment relationship could be terminated at any time during the first month by either party. Termination with notice was possible, with the notice period being the same for both parties and usually 14 days (§§ 1158 and 1159 to 1159c).

Under the influence of so-called protective legislation, the 1926 amendments of the General Austrian Civil Code supplemented the previously dispositive provisions with mandatory provisions, the purpose of which was to protect the person providing services. The general mining law and the trade licensing code also maintained the concept of an employment contract, although they also contained provisions aimed at providing protection to employees.³¹

²⁹ Act No. 15/1914 RGL., on the employment relationship of state officials and state servants (Service Pragmatics).

³⁰ As for the issue studied the relevant changes were to title XXVI of the General Civil Code.

³¹ BĚLINA, M. et al. *Pracovní právo. [Labor Law]*, 7th edition. p. 22.

III. THE PERIOD OF THE FIRST CZECHOSLOVAK REPUBLIC

After the establishment of the Czechoslovak Republic, the legal system of the Austro-Hungarian Monarchy was retained based on the reception norm,³² therefore, the General Civil Code continued to apply, regulating, *inter alia*, the area of labor law, i.e. service contracts.

A service contract, as a consensual type of legal act, emerged as soon as someone undertook to personally perform a service for another for an agreed period of time; no special form was required for validity; an informal agreement between the parties on the obligation to perform work appropriate to the circumstances was sufficient. As a rule, the agreed work was specified at least in terms of type; only exceptionally did the parties also agree on the scope and method of providing services, the remuneration for the work performed, and the period for which the service was to be provided.³³

For the establishment of an service relationship to be valid, it was required that the exact moment of commencement of the service relationship be determined. At this time, The General Civil Code already contained a protective right, the so-called coercive right, embodied in the mandatory norm in the provisions of § Section 1164 (as amended by the 1916 amendment cited above).³⁴

Between 1918 and 1921, a whole series of legal regulations was issued, e.g. on the work of women and children, on the protection of wages, on paid leave, on collective agreements, etc. For example, Act No. 91/1918 Sb. z. a n. introduced an eight-hour working day, and this law also brought other benefits, especially for youth. For example, it was stipulated that children under the age of 16 were not allowed to perform night work (and similarly women). A twelve-hour daily working time applied to a some employees only (e.g. cooks, nannies, governesses).

In the 1920s, there was a general stagnation of labor legislation, and improvements in labor legislation in the following period affected only certain groups of workers, especially state employees.³⁵

³² Act No. 11/1918 Sb. z. a n.

³³ For details on regulation of the service contract until the adoption of the Labor Code (No. 65/1965 Sb.), see for example: VOJÁČEK, L. Když služební smlouva dosluhovala. [When the service contract expired.]. In: Jan Dvořák – Karel Malý (eds.). [200 years of the General Civil Code. 1st ed.]. Prague: Wolters Kluwer, 2011, p. 231.

³⁴ KOVÁŘÍK, J. *Společenské pracovní vztahy a pracovní smlouva. [Social work relations and the employment contract.]* Prague: Práce, 1960, p. 115.

³⁵ Cf. for example, Act No. 71/1936 Sb. z. a n., on allowances for former employees on large land holdings, Government Regulation No. 113/1936 Sb. z. a n., implementing the Act of 27 March 1936, No. 71 Sb. z. a n., on allowances for former employees on large land holdings, Government Regulation No. 79/1936 Sb. z. a n., on state contribution to support the unemployed, Act No. 182/1936 Sb. z. a n., amending and supplementing the Act of 20 May 1930, No. 70 Sb. z. a n., regulating the rest and maintenance pay of certain state and other employees and teachers, as well as their survivors, Government Regulation No. 282/1936 Sb. z. a n., on adjustment of the days of payment of service, rest and maintenance pays of state employees and teachers of general and civic schools, as well as their survivors, Government Regulation No. 294/1936 Sb. z. a n., on the adjustment of wage (salary) conditions of employees designated for Sunday sales in commercial trades, Government Regulation No. 305/1936 Sb. z. a n., on the adjustment of service and salary conditions of employees of the National Theatre in Prague.

During the period of the First Czechoslovak Republic, the outline of a new Civil Code was being prepared.³⁶ In the 3rd edition of the government draft of the Civil Code from 1937, the employment contract was regulated in Title 34 in the provisions of §§ 980 to 1016. According to the provisions of § 980, an employment contract is established if a person undertakes to perform work for a salary for certain period of time. According to § 983, the employee was obliged to perform the work personally and the right to work could not be transferred to another. If no salary was agreed upon, an appropriate salary (§ 985) was provided, payable after the work was performed (§ 986). The employment relationship ended upon expiry of the agreed period or upon termination with notice (§ 996). The notice period was usually 14 days (§ 1000). The notice period had to be the same for both parties; if an unequal period was agreed, the longer notice period applied to both parties (§ 1001). The employment relationship could be terminated for “important reason” at any time. Any fact for which it was not possible to fairly demand from the terminating party to remain in the employment relationship any longer was considered an important reason (§ 1002). An employment relationship agreed upon for a trial period could be terminated by both parties at any time during the first month (§ 1007). The employment relationship also ended by death of the employee (§ 1009). Upon termination of employment, the employer was required to issue the employee, at his/her request, a written confirmation of the type and duration of the work (§ 1013). The outline of the new Civil Code limited the contractual freedom of the parties, so that the listed rights of the employee could not be decreased or canceled by the contract (§ 1016).³⁷

However, this law was not adopted due to historical and political events that are now well-known to all.

IV. THE PERIOD OF THE PROTECTORATE OF BOHEMIA AND MORAVIA

During the existence of the Protectorate of Bohemia and Moravia, the area of labor law was affected by very serious interventions and regulations by the state. Based on Government Regulation No. 193/1939 Sb. z. a n., employment offices operated in the territory of the protectorate. Regulation No. 118/1939 Sb. z. a n., on collective employment contracts and on ensuring a uniform wage policy, granted the Ministry of Social and Health Administration the authority to intervene in wage policy.

General work obligation was introduced by Government Decree No. 190/1939 Sb. z. a n. According to it, all able-bodied men between the ages of 16 and 25, to perform “particularly important tasks”, had to fulfill a work duty for a specified period of time (§ 1), which lasted one year and could be extended to up to two years (§ 2). The definition of particularly important tasks was left on the Ministry of Social and Health Administration (§ 3). If someone was called to perform a work duty, their previous employment relation-

³⁶ For more information on the outline see SALÁK, P. jr. et al. *Historie osnovy občanského zákoníku z roku 1937. Inspirace, problémy a výzvy. [History of the 1937 Civil Code Outline. Inspiration, Problems and Challenges.]*. Brno: Masaryk University, Faculty of Law, 2017. *Papers of the Faculty of Law, MU. Theoretical Series, Scientia Edition*. 2017, Vol. 601.

³⁷ KOBER, J. (ed.). *Osnova československého občanského zákoníku. [Outline of the Czechoslovak Civil Code.]*. Prague: Institute of State and Law of the Academy of Sciences of the Czech Republic, 2021, pp. 349 et seq.

ship was terminated (§ 5). Persons who had completed their work duties had priority in finding new work (§ 7). Anyone who acted contrary to the provisions of the regulation or implementing regulations was punished by a fine of up to 20,000 koruna or imprisonment for up to 6 weeks (§ 8). The aforementioned regulation was implemented by Government Regulation No. 195/1939 Sb. z. a n. The work obligation was performed on the basis of a call-up order, prepared and delivered to the person obliged by the employment office (§ 5). The person called up had to report to the employer on the specified day of commencement of service and present his work documents to the employer (§ 10).

In a similar way, the call-up of labor force to perform necessary agricultural work was ensured. This issue was regulated by Government Regulation No. 177/1939 Sb. z. a n. Those who could be called up on the basis of the aforementioned regulation were primarily unemployed persons, persons receiving any social benefits, and persons from the formerly disbanded Czechoslovak army (§ 1). Exceptions were set out in § 2; it was not possible to call up for work duties persons under 16 and over 60 years of age or persons who were physically or mentally incapacitated. The period for which a person could be ordered to perform necessary agricultural work was set at a maximum of 3 months (§ 4). The employment relationship of the assigned persons was declared to be a private-law relationship, but if there was no agreement between the farmer and the assigned person, the conditions set out in the collective employment contract or framework regulations applied (§ 6).

According to Government Regulation No. 46/1941 Sb. z. a n., able-bodied inhabitants of the protectorate aged 18 to 50 could be ordered to perform “urgent work of extraordinary state-political or economic importance” for a period of no more than one year. Such work was understood to mean work that served the defense of the country, provision of food, production of consumer goods, economic usage of the land, improvement of transport conditions, as well as overcoming emergencies and natural disasters. Both private and public enterprises could be ordered to provide some of their workforce. The aforementioned regulation did not apply to workers from agricultural enterprises nor to foreigners. The so-called total deployment was made possible by Government Regulation No. 154/1942 Sb. z. a n. For persons aged 14 and over, work books were introduced by Regulation No. 241/1941 Sb. z. a n., enabling keeping records on the workforce.³⁸

Furthermore, strikes were banned and restrictive wage measures were implemented. According to Regulation No. 404/1942 Sb. z. a n., employers were prohibited from increasing wages or salaries without prior written consent from the Ministry of Economy (§ 1). The latter regulation also contained criminal sanctions for breach of the duties set out therein. According to these provisions, a fine of up to 100,000 koruna could be imposed; the decision was made by the labor office, and its decision could be appealed to the Ministry of Economy and Labor (§ 13). Furthermore, the district office could impose a fine of up to 100,000 koruna for violation of the established duties, as well as imprisonment for up to one year. Persons refusing to perform assigned work could be sent to re-education labor camp (§ 16). At the same time, the position of unions also weakened. All

³⁸ For a closer look at the issue, cf. TAUCHEN, J. *Pracovní právo v protektorátu Čechy a Morava – ještě soukromoprávní odvětví? Dny práva 2011 – Days of Law 2011*. Brno: Masarykova univerzita, 2012. In: *law.muni.cz* [online]. [2025-07-10]. Available at: <<http://www.law.muni.cz/content/cs/proceedings/>>.

trade union centers were merged into the Národní odborová ústředna zaměstnanecká (National Trade Union Employee Center).³⁹

The importance of the employment contract as the basic institution for the establishment of an employment relationship was significantly weakened.⁴⁰ Regulation No. 323/1939 Sb. z. a n. restricted the termination of employment and hiring of workers, fundamentally affecting the previous freedom of contract in negotiating and terminating employment. An employment relationship could only be negotiated or terminated with the consent of the employment office. Such a measure could be taken generally, for certain districts or economic sectors, categories of employees, or for individual enterprises. The restrictions were announced by the Ministry of Social and Health Administration in Úřední list (Official Gazette). It did so by decree, in agreement with the participating ministry (§ 1(1)). The conclusion of an employment relationship or termination of employment without prior consent was legally ineffective, unless the employment office gave subsequently consent in special cases (§ 1(2)). § 2 provided for exceptions where consent was not required (this mainly concerned the hiring of workers in a forestry company or for seasonal work).⁴¹

Other legal regulations through which the state significantly intervened in the regulation of labor relations include, for example, Government Regulation No. 238/1939 Sb. z. a n. According to it employers who intended to stop operating an enterprise or lay off workers had to first seek approval from the labor office (§ 1), whose decision was final (§ 3).⁴²

V. POST-WORLD WAR II PERIOD

In the period after World War II, the regulation of employment contracts was based on the regulations in force during the First Czechoslovak Republic;⁴³ at the same time, however, it was necessary to respond to the labor shortage. Labor relations were particularly affected by the Decree of the President of the Republic No. 88/1945 Sb. z. a n., on general work duty for able-bodied men aged 16 to 55 and women aged 18 to 45.

By Government Regulation No. 13/1945 Sb. z. a n., on temporary establishment of labor protection offices, bodies were created at the district and land levels, tasked with placing citizens in work, regulating wage policy, conducting trade inspection, and others. Decree No. 71/1945 Sb. z. a n., which established the work duty of persons who had lost their Czechoslovak citizenship, was of an administratively coercive nature. Act No. 29/1946 Sb. z. a n. introduced the institution of work books, which not only contained information on qualifications, length of employment, etc., but also served to record and control the workforce.

³⁹ Ibid.

⁴⁰ ŠTEFKO, M. *Pracovní právo v kontextu občanského práva: analýza limitů podpůrné působnosti obecného občanského práva v pracovněprávních vztazích*. [Labor law in the context of civil law: analysis of the limits of the supporting scope of general civil law in labor relations.]. Prague: Auditorium, 2012, p. 27.

⁴¹ For a closer look at the issue, cf. TAUCHEN, J. *Pracovní právo v protektorátu Čechy a Morava – ještě soukromoprávní odvětví? Dny práva 2011 – Days of Law 2011*. Brno: Masarykova univerzita, 2012. In: *law.muni.cz* [online]. [2025-07-10]. Available at: <<http://www.law.muni.cz/content/cs/proceedings/>>.

⁴² Ibid.

⁴³ However, also regulations from the occupation period, as allowed by the Decree of the President of the Republic No. 11/1944 Úř. v.

Even during this period, restrictions on contractual freedom persisted. For example, Decree of the President of the Republic No. 88/1945 Sb. z. a n. made termination of employment subject to prior consent of the district labor protection office, granted after hearing the enterprise council. By this decree the state, represented by labor protection offices and later by labor departments of district national committees, became akin to an intermediary in the relationship between employee and employer. The scope of state intervention was specified in part two of the cited decree under the title “Restrictions on the negotiation and termination of employment (apprentice) relationships”. In § 13 of the cited decree, it was stipulated that “An employment (apprentice) relationship may be legally concluded or terminated... only with the prior consent of the relevant district labor protection office...”.

VI. PERIOD AFTER FEBRUARY 1948

After the February events of 1948, labor law was gradually completely separated from civil law. The reason was the change in the political system, in which work was no longer perceived as a commodity and for this reason it was not possible for the Civil Code, which mainly regulates property relations, to also affect employment relations.⁴⁴

There was also a change in relation to the concept of an employment contract. While before 1948, an employment contract had (and has again today) the character of a private law obligation, after the communist coup the employment relationship began to be viewed as a public law relationship, the parties to which were the employee and the state, represented by the enterprise.⁴⁵

During the so-called legal biennium, new codes in various branches of law were adopted. One of the codes was the new Civil Code adopted in 1950, which no longer contained provisions on employment contracts. This was justified by the fact that the code could not adopt the bourgeois concept in which labor power was viewed as a commodity.⁴⁶

For this reason, the provisions on the service contract from the otherwise repealed Austrian General Civil Code still applied to this type of contract until 1965⁴⁷ – in other words, the regulation of the service contract from Chapter XXVI of the General Civil Code was still in force (in Bohemia and Moravia).

Until the adoption of the Labor Code No. 65/1965 Sb., there were no uniform rules for the establishment, changing and termination of employment relationships in Czechoslovakia, i.e. the legal regulation of labor law remained fragmented; however, at least in some areas it was unified.⁴⁸

⁴⁴ KUKLÍK, J. et al. *Dějiny československého práva 1945–1989. [History of Czechoslovak Law 1945–1989.]*. Prague: Auditorium, 2011, pp. 159 and 383.

⁴⁵ *Ibid.*

⁴⁶ VOJÁČEK, L. Když služební smlouva dosluhovala. [When the service contract expired.]. In: Jan Dvořák – Karel Malý (eds.). *[200 years of the General Civil Code. 1st ed.]*. p. 233.

⁴⁷ KUKLÍK, J. et al. *Dějiny československého práva 1945–1989. [History of Czechoslovak Law 1945–1989.]*. p. 158.

⁴⁸ Cf. SKŘEJPKOVÁ, P. Zásahy státu v oblasti pracovního práva a jeho deformace v poválečném období. [State Interventions in the Field of Labor Law and Its Deformation in the Post-War Period.]. In: Karel Malý – Ladislav Soukup (eds.). *Vývoj práva v Československu v letech 1945–1989. [Development of Law in Czechoslovakia in the Years 1945–1989.]*. Prague: Karolinum, 2004, p. 524.

An employment relationship could arise on the basis of one of three legal facts: an employment contract (service contract), an administrative act, and by law. The most important sources of labor law at that time were the General Civil Code No. 946/1811 BGBl., as amended by the third amendment No. 69/1916 BGBl., dealing with the service contract in the provisions of §§ 1151 to 1174.⁴⁹ After 1948, however, the rules on service contracts were interpreted in accordance with the new political and economic circumstances, i.e. in particular in accordance with the Constitution of May 9, 1948.⁵⁰

A peculiar type of employment relationship, established by an administrative act, was the employment relationship arising from the issuance of an assignment decree by the district labor protection office, which directly assigned the worker to a specific position and thus temporarily included him in the work process in the most important sectors of the national economy within the meaning of the Decree of the President of the Republic No. 88/1945 Sb. z. a n., on general work duties. The employment relationship was established on the date indicated in the assignment decree as the date of commencement of employment. Termination of such an employment relationship by notice was valid only if both the employee and the employer appeared in person for a hearing before the district national committee (in the event of an appeal, also before the regional national committee); as already mentioned above, the relevant national committee had to give its consent to the conclusion or termination of the employment relationship. This complex procedure was only overcome with the adoption of the Labor Code No. 65/1965 Sb.⁵¹

The employment relationship between the state and persons who exercised public authority and carried out certain activities in the name of the state was established on the basis of an administrative act. These were mainly state employees who first applied for the position and, after being selected from other applicants, were assigned to the position or were directly appointed to the position. Individual employees of the state, state-owned or state-administered enterprises, institutes and funds, teachers of general and civic schools, employees of territorial self-government associations, clergy of congruous churches and religious societies performing public spiritual administration tasks in systemized places with the consent of the state administration of cult, professors of diocesan theological schools, etc. could be considered public employees. Their working conditions and salaries were regulated by generally binding regulations. Employment conditions of public employees were specific in that their employer was the state. These employees thus directly participated in the exercise of state power and, compared to other groups of employees, enjoyed relative certainty of employment and stability of working conditions (wages, etc.). An employment relationship based on an election was established on the day that was previously determined as the day of taking up the elected position, and conversely ended with the expiration of the election period, dismissal from office, or resignation from office.

⁴⁹ For details on regulation of the service contract until the adoption of the Labor Code (No. 65/1965 Sb.), see for example VOJÁČEK, L. *Když služební smlouva dosluhovala*. [When the service contract expired.]. In: Jan Dvořák – Karel Malý (eds.). *[200 years of the General Civil Code. 1st ed.]*. pp. 230–240.

⁵⁰ *Ibid.*, p. 230.

⁵¹ NOVOTNÝ, J. *Nábor a rozmístování pracovních sil v Československu po 2. světové válce: historie a současnost*. [*Recruitment and deployment of labor in Czechoslovakia after World War II: history and present.*]. Prague: Ministry of Labor and Social Affairs of the Czech Republic, 1975, pp. 2–4.

Another difference was the fact that in the case of establishing an employment relationship of state employees applicants were usually subject to increased demands compared to those for ordinary employees, precisely because after taking up the job they acted on behalf of the state. These specific requirements included, for example, Czechoslovak citizenship, state reliability and personal integrity, physical and mental fitness for the work performed, confirmation of having completed a reasonable period of work in production, or the necessary political and professional competence.

As for the establishment of an employment relationship by law, other laws adopted before the world wars remained still in force. Among them, we can mention Act No. 9/1914 RGBL., on the service contract of persons appointed to higher-level services in agricultural and forestry enterprises (Act on Estate Officials).⁵² According to this regulation, an employment relationship could be established by oral agreement or written statement from the employer delivered to the employee, or by written contract.

VII. THE PERIOD AFTER THE PUBLICATION OF THE 1965 LABOR CODE

The importance of the employment contract as a tool for establishing an employment relationship increased again in the 1960s and culminated in the adoption of the Labor Code. However, with the transition from an individualistic to a collective approach in labor law, the employment contract served as a means for voluntarily establishing an employment relationship, without fully regulating the mutual rights and obligations of the contracting parties.⁵³

The Labor Code was adopted in 1965 as Act No. 65/1965 Sb., effective from 1. 1. 1966. It was amended many times before 1989. The most significant amendment was implemented by Act No. 188/1988 Sb., which had significant impact on a number of areas. It was made possible to conclude a fixed-term employment contract, a uniform notice period of two months was established, and working hours were shortened. Of the previous amendments, the 1968 change which extended maternity leave from 22 to 26 weeks is worth mentioning. In 1975, changes were made to the termination of employment. Among other things, it was no longer possible to terminate an employment relationship due to “disturbance of the socialist social order.” In the 1980s, the amount of leave was extended from two to three weeks and maternity leave was further extended.⁵⁴

⁵² The law was repealed only with the adoption of the Labor Code No. 65/1965 Sb., with the transitional provisions enforcing the principle of *lex posterior derogat legi priori*, i.e. that employment relationships established before January 1, 1966 were to be assessed according to the new Labor Code. In accordance with § 276(2) of the Labor Code, claims arising from employment relationships up to 31 December 1965 and legal acts relating to the change and termination of employment relationships made before 1 January 1966 and their legal effects, even if they occurred after this date, were to be assessed in accordance with the previous regulations; however, the validity of the establishment of an employment relationship created by an employment contract was to be assessed in accordance with the Labour Code No. 65/1965 Sb.

⁵³ ŠTEFKO, M. *Pracovní právo v kontextu občanského práva: analýza limitů podpůrné působnosti obecného občanského práva v pracovněprávních vztazích. [Labor law in the context of civil law: analysis of the limits of the supporting scope of general civil law in labor relations.]*. Prague: Auditorium, 2012, p. 27.

⁵⁴ HAVELKOVÁ, B. *Pracovní právo. [Labor law.]*. In: Michal Bobek – Pavel Molek – Vojtěch Šimíček (eds.). *Komunistické právo v Československu. Kapitoly z dějin bezpráví. [Communist law in Czechoslovakia. Chapters from the history of injustice.]*. Brno: Masaryk University, International Institute of Political Science, 2009, p. 493.

From a systematic point of view, the Labor Code contained a preamble proclaiming the victory of the socialist legal order in Czechoslovakia, stating that labor creates the prerequisites for strengthening the harmony of individual interests with the interests of society. It was thus necessary to regulate employment relations in a new and comprehensive manner by a unified labor code. This was followed by ten articles expressing the basic principles on which the Labor Code was built – the right to work, the exclusion of exploitation of man by man, the right to remuneration for work, the obligation to deepen socialist labor discipline, the equal status of women and men, the right of young people to vocational training, and the participation of the Revolutionary Trade Union Movement (the unitary and sole permitted trade union) in labor relations. This was followed by the legal provisions themselves, divided into six parts – general provisions, employment relationship, apprenticeship relationship, agreements on work performed outside of employment, common provisions, and final provisions. The most extensive was the section devoted to employment relationship. The act is characterized by a change in terminology. The terms “employee” and “employer” were replaced by the terms “worker” and “socialist organization”, which were intended to express a different quality of socialist relations compared to capitalist relations.⁵⁵

As a result of the effort to separate labor law from civil law, the Labor Code was based on four basic principles – unity, complexity, mandatory nature, and independence.

Unity meant a unified regulation of labor relations for all employees, which reflected the socialist social system and the equal relationship of citizens to the means of production. The principle of comprehensiveness consisted in the fact that the legal regulation covered almost all aspects of employment relations, with special regulation being reserved only for issues where more frequent changes were expected. Based on the principle of mandatory nature, the Labor Code contained predominantly mandatory norms from which it was not possible to deviate in a specific employment relationship, neither to the detriment nor to the benefit of either participant in the employment relationship. However, this led to the frequent adoption of new regulations responding to various situations in practice, causing significant particularity of the regulation. The separation of labor law from other branches of law, especially civil law, was most evident in the framework of the principle of independence. The Labor Code thus also included the regulation of general legal terms, such as legal personality or legal acts. This principle led to the exclusion of the subsidiarity of the Civil Code in the regulation of labor relations.⁵⁶

The Labor Code distinguished the ways in which an employment relationship could arise: on the basis of an employment contract (§ 27(2)), by appointment (§ 27(4)) or by election (§ 27(3)). It could be established by election in cases stipulated by special regulations, or by statutes or resolutions of the central bodies of social organizations. An employment relationship was created by appointment in cases of managing workers, who

⁵⁵ BLAŽKOVÁ, T. Pracovní právo ve světle kodifikace se zřetelem k jeho zásadám. [Labor law in the light of codification with regard to its principles.]. *Právněhistorické studie*. 2020, Vol. 50, No. 2, p. 123.

⁵⁶ Cf. KUKLÍK, J. et al. *Dějiny československého práva 1945–1989. [History of Czechoslovak Law 1945–1989.]*. pp. 385–387.

were appointed to their position by the body superior to the organization in which the employee was to perform his/her function.⁵⁷

An employment contract was, as it is today, the most common way of establishing an employment relationship. The essential elements of an employment contract were the type of work, the place of work and the date of commencement of work (§ 29(1)), and these remain unchanged to this day.

The employment contract had to be concluded in writing. However, the lack of this form did not render the employment contract invalid. It also had to be concluded in writing if it was concluded with the worker, on behalf of the organization, by the national committee in accordance with special regulations within the framework of recruitment carried out by national committees. The organization was also obliged to conclude an employment contract in writing if the worker requested it, if the worker entered into an employment relationship for the first time after completing apprenticeship or graduating from school, or if the employment contract was concluded by a juvenile, if the organization assumed the obligation to train the worker for a certain profession when concluding the employment contract, or if it concerned a worker who had been deprived of legal capacity by a court decision or whose legal capacity had been limited by a court decision (§ 32). This is also confirmed by the Supreme Court's decision of 15. 11. 1967, according to which the organization is obliged to conclude an employment contract in writing, in some cases only if the employee requests it (§ 32(1) of the Labor Code). The employee must exercise the right to have the contract done in writing during negotiations on concluding an employment contract. If he exercises this right, the organization is obliged to conclude the employment contract in writing, i.e. to submit a written draft of the employment contract for his written acceptance (§ 244(5) of the Labor Code).⁵⁸

The type of work could be determined in different ways, depending on the operating conditions. It was not allowed to be negotiated as an individually determined work task; the worker's work commitment was of a generic nature. At the same time, however, it should not be defined too generally, i.e. vaguely.⁵⁹ The organization could (with the exceptions specified in the provisions of §§ 37 and 38 of the Labor Code) require from the worker only such work tasks that fall within the framework of the type of work (office) agreed upon; if the worker refuses to perform other work tasks, this is not a violation of labor discipline.⁶⁰ If the type of work was defined in the employment contract as a range of work activities and not as the performance of a specific activity, then the assignment of work other than that previously performed within the given type of work cannot be considered a change in the agreed working conditions within the meaning of § 36(2) of the Labor Code.⁶¹

⁵⁷ For dismissal from office and termination of employment, cf. Decision of the Supreme Court of the Slovak Socialist Republic, file no. 4 Cz 2/1975 dated 28. 3. 1975.

⁵⁸ Decision of the Supreme Court of the Czech Socialist Republic, file no. Prz 35/1967 from 15. 11. 1967.

⁵⁹ Cf. VOJÁČEK, L. Pracovní poměr a pracovní smlouva. [Employment relationship and employment contract.]. In: Karel Schelle – Jaromír Tauchen (eds.). *Encyklopedie českých právních dějin. Vol. V. [Encyclopedia of Czech legal history. Vol. V.]*. Pilsen: Aleš Čeněk, 2016, p. 694.

⁶⁰ Decision of the Supreme Court of the Czech Socialist Republic, file no. 6 Cz 36/1980 dated 21. 11. 1980.

⁶¹ Decision of the Supreme Court of the Slovak Socialist Republic, file no. 4 Cz 5/1979 dated 31. 5. 1979.

The place where the work is to be performed should be determined in such a way that it is not possible to circumvent the provision on the exceptional and time-limited possibility of transferring a worker to another place without his/her consent. If the place of work (§ 29(1)(b)) was defined in the employment contract in such a way that it precisely specified the workplace, then a unilateral measure by the organization aimed at ensuring that the employee works consistently at another workplace, even if still at the seat of the organization, must be considered as a transfer of the employee within the meaning of the provisions of § 38(2) of the Labor Code.⁶² However, the determination of the place did not prevent the worker from voluntarily taking on the obligation to work for the organization elsewhere.⁶³

The day of commencement of work was one of the essential requirements of the employment contract because the employment relationship was established on that day (§ 33(1)), under certain conditions even if the worker did not actually start working that day. However, if the worker did not commence work on the agreed day without being prevented from doing so by an obstacle at work, or did not notify the organization of this obstacle within a week, the organization could withdraw from the employment contract (§ 33(2)).

As for the agreement on essential requirements in an employment contract, the courts concluded that the establishment of an employment relationship can also occur by creating a factual situation (the employee begins to perform work, which the organization acknowledges by starting to give him/her instructions to perform it). The agreed type of work can then be considered to be the type of work that the worker began to perform for the organization without objection and with its knowledge, and the agreed place of work can be the plant (office, institute) in which he began to work; the agreed day of commencement of work can be seen in the day when the worker actually began to perform such work.⁶⁴

In addition to the essential requirements listed above, it was also possible to agree on other requirements that the participants were interested in. The most common collateral arrangement was the employee's salary classification (§ 29(2)). The employment relationship was agreed for an indefinite period, unless its duration was explicitly specified in the employment contract (§ 30). If the employment relationship in the employment contract is concluded for a fixed term which, however, is inappropriately long, it may be an employment relationship for an indefinite period if the agreement on the duration of the employment relationship contained in the employment contract is invalid according to the relevant provisions of the Labor Code.⁶⁵ A probationary period could also be agreed upon in the employment contract. If the probationary period was not agreed in writing, its agreement was invalid. Unless a shorter probationary period was agreed upon, it was by law one month long. The agreed probationary period could not be extended

⁶² Cf. Decision of the Supreme Court of the Czech Socialist Republic, file no. 6 Cz 29/1982 dated 26. 3. 1982.

⁶³ VOJÁČEK, L. Pracovní poměr a pracovní smlouva. [Employment relationship and employment contract.]. In: Karel Schelle – Jaromír Tauchen (eds.). *Encyklopedie českých právních dějin. Vydání V. [Encyclopedia of Czech legal history. Vol. V.]*. p. 694.

⁶⁴ Cf. Decision of the Supreme Court of the Czech Socialist Republic, file No. Prz 35/1967 dated 15. 11. 1967.

⁶⁵ Opinion of the Supreme Court of the Czech Socialist Republic, file No. Cpj 186/1977, dated 24. 5. 1978.

subsequently. A probationary period could not be validly agreed after the employment relationship had already been established; it therefore could not be concluded retroactively, but rather no later than on the day agreed as the day of commencement of work by the employee.⁶⁶ If an employee was unable to work during the probationary period due to work obstacles for a total of more than six days, the duration of these obstacles was not included in the probationary period (§ 31).

Invalid employment contract provisions included, for example, cases where the employee and the organization incorporated a provision into the employment contract that contradicted the Labor Code or other legal regulation, e.g. a shorter or longer notice period or a pre-waiver by the employee of his/her guaranteed rights from the employment relationship.

The agreed content of the employment contract could only be changed if the organization and the worker agreed. A written employment contract could only be amended in writing. A worker was only required to perform work of a different type or in a different location than was agreed in the employment contract without his/her consent in exceptional cases specified in §§ 37 and 38. As for the form of consent, the worker's consent did not always have to be given for a specific transfer to another work (relocation); the substantive condition for a valid transfer to another work (relocation), i.e. the worker's consent, was met not only in the case where the worker gave his/her consent to a specific change in the agreed working conditions, but also when his/her consent to a possible transfer to another work (relocation) in the future was contained in the employment contract itself. However, even this worker consent to being transferred to another work (to relocation) in the future must have met all the requirements of a valid expression of will. Therefore, the worker's consent to a future transfer to any work (with relocation to any place of work) would not be valid, given that the type of work, or the place of work, would not have been agreed upon with sufficient certainty for the future [§ 242 (1)(b) of the Labor Code] and that such an expression of will would circumvent the provisions of §§ 37 and 38 of the Labor Code.⁶⁷

As regards transfer to another job (§ 37), the organization was obliged to transfer the worker to another work, especially in cases where, due to their health condition, the worker could not perform his/her previous work. If the organization was obliged to transfer an employee, this should have preferably been done within the agreed type of work. If this was not possible, the transfer took place outside the type of work, even if the worker did not agree to it. Furthermore, transfer to another work was also permitted in cases of downtime, natural disasters, or if the necessary operational situation of the organization required it; in this case, transfer to another work was not allowed to exceed 30 working days per year. When transferring to another work, the organization had to take into account the worker's health, suitability for the work, and the worker's qualifications. Furthermore, there were provision on business trips and relocations (§ 38). To relocate a worker to perform work permanently at other location than the one agreed in the employment contract was allowed only within the given organization and only

⁶⁶ Decision of the Supreme Court of the Czech Socialist Republic, file No. 6 Cz 12/1983 dated 31. 3. 1983.

⁶⁷ Decision of the Supreme Court of the Czech Socialist Republic, file No. Prž 35/1967 dated 15. 11. 1967.

if it was absolutely required by its operational needs. In the event of an invalid transfer of a worker to another work (relocation), the worker could mainly seek determination that the transfer to another job (relocation) was invalid. This is a declaratory legal action that is not based on special provisions of the Labor Code; it is therefore not an action that the law would regard as a legal remedy and whose legal effects would be taken into account by it, and therefore it would not be necessary to prove the existence of an urgent legal interest. The legal basis for this declaratory legal action is the provision of § 80(c) of the Code of Civil Procedure; therefore, in the dispute, the worker must claim and prove the existence of an urgent legal interest.⁶⁸ After the reasons for the transfer or relocation ceased to exist, the organization was obliged to move the employee back to his/her original work position (§ 39).

The worker himself/herself could also request a transfer to another work or relocation (§ 40) if, according to a medical opinion, the performance of the current work was not suitable for him/her or was not suitable in given location, or for another serious reason. The organization was obliged to comply with the request as soon as its operational capabilities allowed. The work or location to which the worker was transferred or relocated had to be suitable for him/her.

It was possible to terminate the employment relationship by agreement (§ 43), then the employment relationship ended on the date as agreed. The agreement had to be in writing, and the employee had to receive one copy thereof. The reasons were stated in the agreement only if the worker requested it. Both the employee and the organization could terminate the employment relationship with notice (§ 44), but only for reasons stated in the Labor Code (for the possibility of an employee to terminate the employment relationship without giving a reason, cf. the amendment to the Labor Code described above). The reason for termination with notice had to be stated in the notice itself and could not be changed subsequently. Multiple reasons for termination could be stated in one written notice; therefore, the accumulation of multiple reasons for termination in one notice was generally permissible.⁶⁹ The notice periods were the same for both the organization and the worker and gradually increased according to the worker's age, with the shortest notice period for workers under 30 years of age being one month and the longest notice period of three months being applicable for workers over 40 years of age (§ 45). The legal effects of terminating an employment relationship by notice of termination only occurred from the moment the notice of termination was delivered to the other party to the employment relationship.⁷⁰ During the protected period, notice of termination could not be given; the protected period covered, for example, illness or service in the armed forces (§ 48); there were also some exceptions to this prohibition (§ 49). However, the prohibition on termination with notice under § 48 applied only to the organization, and not to the employee; the employee could terminate the employment relationship with notice given regardless of the fact that there is a situation that prevents the organization from doing the same.⁷¹ Immediate termination of employment was possible only

⁶⁸ Decision of the Supreme Court of the Czech Socialist Republic, file No. Prz 35/1967 dated 15. 11. 1967.

⁶⁹ Decision of the Supreme Court of the Czech Socialist Republic, file No. Prz 35/1967 dated 15. 11. 1967.

⁷⁰ Decision of the Supreme Court of the Czech Socialist Republic, file No. 6 Cz 173/1967 dated 22. 12. 1967.

⁷¹ Decision of the Supreme Court of the Czech Socialist Republic, file No. Prz 35/1967 dated 15. 11. 1967.

exceptionally, namely for convictions for a criminal offense with sentence longer than one year or for such a gross violation of labor discipline that continuing to work would lead to unsustainability of labor discipline in the organization (§ 53). Before a worker's employment relationship could be terminated immediately, the organization must have determined the reason for the immediate termination; it was not enough to simply suspect that there was a valid reason. Determining the reason was usually not possible without the worker's statement on the reason for termination of employment applied by the organization.⁷² The last employment relationship agreed for a fixed period ended with the expiration of this period, but if the worker continued to work after the end of this period with the knowledge of the organization, it was considered that this employment relationship changed to an employment for an indefinite period (§ 56). The position of enterprise committees was very strong in terminating employment relationships. The organization could give notice of termination, or terminate the employment relationship immediately, only with prior consent of the enterprise committee, otherwise the termination of the employment relationship was invalid (§ 59).

Increased protection for workers was included in many places in the Labor Code. One specific example is the provision of § 243(4) where the Labor Code regulated the invalidity of labor law acts significantly in favor of the employee. The provisions of the Labor Code stipulated that the invalidity of a legal act could only be detrimental to the worker if it was caused exclusively by himself/herself. If it turned out that the employment contract was not valid, and that the fault for this could be attributed only to the organization or to both the worker and the organization, the worker had in principle the same rights as a worker in a valid employment relationship. However, if the invalidity of the employment contract was caused exclusively by the worker, he/she was only entitled to remuneration for the work actually performed and was entitled only to those labor law claims that the Labor Code expressly granted him/her.

CONCLUSION

The development of the employment contract and its formation, however, does not end with the above-mentioned Labor Code of 1965. It was significantly amended by Act 3/1991 Sb., amending and supplementing the Labor Code and thus adapting the area of labor law to the new democratic conditions established in Czechoslovakia post 1989. Since then, the Labor Code originally adopted in 1965 was amended many times and was in force in the Czech Republic in its modified form until 2006, when it was replaced by the new Act No. 262/2006 Sb., entitled again "the Labor Code", which is still in force today.

It aims primarily to establish rules for the application of civil law standards in the area of employment relations, strengthening the contractual freedom of employers and employees, respect for equal treatment of employees and the prohibition of any discrimination, with the basic labor law relationship for the performance of dependent work being the employment relationship.

⁷² Decision of the Supreme Court of the Czech Socialist Republic, file No. 5 Cz 29/1975 dated 30. 6. 1975.

Further significant milestone in the development of the employment contract was brought about by the adoption of Act No. 89/2012 Sb., the Civil Code. Although it was not possible, as originally contemplated by the recodification commission, to regulate all private law in single code, and the Labor Code remained as a stand-alone code regulating labor relations, the new Civil Code nevertheless still has an impact on labor law. First of all, the Civil Code is a general law and the Labor Code is special with respect to it, which follows from § 4 of the Labor Code, stipulating (since 2012) that labor relations are governed by this act (i.e. the Labor Code); however, if this act cannot be applied, they are governed by the Civil Code, always in accordance with the basic principles of labor law relations.

The development of labor law, and within it, of course, of employment contract, also responds to the integration of the Czech Republic into the European Union. The new Labor Code does so directly in its § 1, where it states that the Labor Code incorporates the relevant acts of the European Union, and a list of them is provided in a footnote.

If we are to outline the developments currently taking place in the field of labor law, then it is about taking into account the emergence of new technologies and their reflection in labor law standards. We are talking about adjusting such institutions as remote work (work from home),⁷³ job sharing,⁷⁴ all-day availability of employees on mobile phones or e-mail, etc. The digitization of labor negotiations is also expected to bring simplification; here we mean concluding employment contracts in electronic form, their electronic signing or delivery.

Last but not least, there are also considerations about increasing the flexibility in terminating employment relationships by giving notice without giving a reason, which is becoming a socially and politically interesting issue. However, far from all considered and implemented changes to labor law in general and employment contracts in particular have been perceived as improvements – on the contrary, there are complaints in legal science that legislators and courts “create new problems and questions through permanent, insufficiently thought-through changes.”⁷⁵ It is as if here, too, the basic question or consideration on the part of the lawmakers was missing as to whether their efforts do and can lead us to the place we want to get.⁷⁶

⁷³ On this cf. BENEŠOVÁ, E. Home office – přežije i v pocovidové době? [Home office – will it survive even in the post-COVID era?]. In: František Cvrček – Helena Jermanová (eds.). *Metamorfózy práva ve střední Evropě 2022: Jde nám ještě o demokracii a právo?* [Metamorphoses of law in Central Europe 2022: Are we still concerned about democracy and law?]. Pilsen: ZČU, 2022, pp. 228–245; and KURZTÉGL, P. Vybrané otázky home office u osob v pracovním poměru vzniklém jmenováním. [Selected issues of home office for persons in employment relationships established by appointment.]. In: Peter Brezina – František Cvrček (eds.). *Metamorfózy práva ve střední Evropě 2024: Alfeus a Augiášův chlév*. [Metamorphoses of law in Central Europe 2024: Alpheus and the Augean stables.]. Pilsen: ZČU, 2024, pp. 367–381.

⁷⁴ On this cf. BENEŠOVÁ, E. Sdílené pracovní místo. Nalezne místo u českých zaměstnavatelů, o to více v době nouzového stavu? [Shared workplace. Will it find a place with Czech employers, especially in times of emergency?]. In: František Cvrček – Helena Jermanová (eds.). *Metamorfózy práva ve střední Evropě 2020: Právo a krize*. [Metamorphoses of law in Central Europe 2020: Law and crisis.]. Pilsen: ZČU, 2020, pp. 144–155.

⁷⁵ MORÁVEK, J. Nabídková povinnost při odvolání a při vzdání se vedoucího pracovního místa. [The obligation to offer a proposal when dismissing and resigning from a managerial position.]. *Právnícké listy*. 2024, No. 1, p. 27.

⁷⁶ Cf. BREZINA, P. Formalizmus pri tvorbe práva – kreslíme mapu práva správne? [Formalism in the creation of law – are we drawing the map of law correctly?]. In: Eduard Bárány (ed.). *Tvorba a výklad práva v podmienkach právniho pluralizmu*. [Creation and interpretation of law in the context of legal pluralism.]. Prague: Wolters Kluwer, 2021, pp. 55–63.

But it is perhaps not entirely appropriate to end so pessimistically. After all, if we compare the original text of the Labor Code from 1965 with the current valid and effective legal regulation, we come to the conclusion that many institutes, principles, and indeed the overall perception of the Labor Code have not changed that much over the years. The essence of labor law, which certainly lies in the protective function of labor legislation, still persists and, with regard to technological progress and increased demands on employees, only receives partial adjustments. Although the professional community has been striving for a more liberal concept of labor law for several years (the biggest change here is the change following the issuance of the Constitutional Court's ruling No. 116/2008 Sb., which returned to the principle of subsidiarity, i.e. the use of the Civil Code in cases where the Labor Code itself lacks legal regulation), the supporting pillars have not changed in essence and labor law thus retains its special place in the Czech legal environment.