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In this issue of HR News, we will introduce you to the changes, which will affect labour law regulations not only in the Czech Republic, but also in Slovakia and Hungary. Whereas the amendment to the Czech Labour Code is in the first reading in the Chamber of Deputies of the Czech Parliament, in Hungary the amendment has already come into force and in Slovakia its effectiveness is imminent. In the second part we will focus on the latest judgment of the Supreme Court of the Czech Republic, which concerns the, still widely in use, "švarcsystém" (i.e. an economic activity where people working for an employer are not his employees, but individual entrepreneurs).

Also, please be reminded that on September 14, 2011 there will a special HR Meeting held at the City Tower, which will be on the topic "**The Pros and Cons of the Amendment to the Labour Code.**" For details, please refer to page 2 or visit our website – [www.randls.com](http://www.randls.com).

## LABOUR CODE AMENDMENTS IN CENTRAL EUROPE

Important revisions of the Labour Code are not taking place only in the Czech Republic, but also in neighboring Slovakia and in Hungary. That is why in this issue of HR News we will be focusing on the changes that await employees behind the Czech border – in many aspects the revisions are surprisingly similar to our substantive amendment to the Labour Code.



### CZECH LABOUR CODE AMENDMENT

*As you were already informed in the previous issues of HR News, the proposed amendment to the Labour Code evoked a number of conflicting reactions, and that is why the Government was given several variants and was left to the task of deciding which of the variants will be submitted to the Chamber of Deputies. The Government approved of the final version in late June and on July 12, 2011 it was passed through the first reading at an extraordinary session of the Chamber of Deputies.*

#### The final version of the proposed draft

The final version, among other things, answered the contentious issue of what type of invalidity of legal acts in employment relationships will be preferred. The draft preserves the variant in which in some cases, the nullity is set as absolute (which means that in certain cases the invalidity will be considered without the claim of the other party).

Unlike the original version, however, a provision, which set out the invalidity of employment contracts and agreements on work performed outside the employment relationship in case of failure to comply with their written form, was left out. Thus, it will be possible to compensate the lack of written form. Compared to the original draft, this enhances legal certainty to employees, because this means that even in the absence of a written employment contract, the employment relationship may be valid.

#### Employment relationship for a fixed term

The maximum duration of an employment relationship for a fixed term is proposed to be extended to 3 years with a maximum of two repetitions – stating that any extension of the employment relationship is considered as a repetition. Employment relationships for a fixed term, which terminated more than 3 years ago, are disregarded.

#### The Guide to Fair Recruitment of Employees

LMC, s.r.o., in cooperation with the Ombudsman, prepared a publication called The Guide to Fair Recruitment of Employees. Its goal is the observance of equal treatment to all job seekers. The guide offers very useful information on what to avoid when you enter ads for new employees. It can be found (only in Czech) at <http://www.lmc.eu/ferove>.

Thus, for example, it will be possible that an employment relationship will be agreed for 1 year, for example for the year 2012, and then twice extended for a further year, i.e. for the year 2013 and for 2014. The soonest additional employment relationship for a fixed term can be contracted in 2018, i.e. 3 years after the termination of the previous repetition of the relationship. The maximum length of these employment relationships will be three years, so in extreme cases it will be possible to conclude an employment contract for a fixed term for three times three years.

From these restrictions on fixed term employment relationships, only one exception remains – for fixed term employment relationships closed during the period of temporary assignment made by the employment agency.

#### Other changes

Other provisions of the amendment, with the exception of some legislative technical changes, stayed in the same form, which we informed you of in previous issues of HR News. In the proposal, henceforth remains the regulation, which extended the possibility to agree on a salary with regard to overtime work, establishing the institute of temporary gratuitous assignment and the discretionary power of the court. Furthermore, changes also remain in the area of transfer of rights and obligations, regulation of the trial period, severance pay and working time.



### SLOVAK LABOUR LAW AMENDMENT

*The amendment of the Slovak Labour Code, which will be effective from September 1, 2011, changes a wide range of labour law issues. It especially caters to employers through introducing more flexible employment relationships, but also strengthens the position of parents and pregnant women in an effort to allow an easier connection between life at home and at work.*

#### Changes for managerial employees

Among the most important changes included in the amendment is the extension of the trial period for managerial employees to up to 6 months, and the possibility to negotiate a 3 month longer trial period for all employees in the collective agreement (the maximum length of the trial period for managerial employees will thus be up to 9 months, for other employees up to 6 months). Also, the maximum range of overtime work will increase for managerial employees – if they agree, it will be possible for them to work up to 550 hours of overtime work a year (i.e. 150 hours more than before).

#### New institutes

The amendment is also to enact the Slovak institute of non-competition clause. It will be possible to agree upon it with the employee for up to one year after the termination of their employment relationship, whereas the employee will be entitled to at least 50% of their salary for the duration of the clause. The account of working hours and the so-called split work place will be introduced to make it possible for more employees to perform work on a shorter working time at one position (they can agree on working

hours and its content among themselves, in case of disagreement, the employer decides).

#### Other significant changes

There is a liberalization of the regulation of employment relationship for a fixed term. It will be possible to arrange it to up to 3 years, with the option to repeat it 3 times in the course of three years (instead of the current two repetitions over 2 years). A different notice period - from one to three months - will be introduced according to fixed rules (the length of employment relationship, the grounds for notice, etc.).

The leave will be extended to a minimum of 5 weeks a year for all employees who are over 33 years of age. Finally, there will be changes concerning collective employment relationships, consisting mainly in strengthening the position of councils of employees at the expense of trade unions.



#### HUNGARIAN LABOUR CODE AMENDMENT

*Although the amendment to Hungarian Labour Code has been in effect since August 1, 2011, currently the local Parliament is discussing a proposal for a brand new Labour Code, which is expected to be in effect from January 1, 2011.*

Nevertheless, the current amendment to the Hungarian Labour Code provides several major changes. Just as in Slovakia, it will now be possible to negotiate an extended trial period of up to 3 months in the collective agreement (i.e. the maximum length of the trial period will be up to 6 months).

There will also be adjustments to the collective employment relationships, where it will be the employer's duty to inform the trade unions on matters related to the temporarily assigned employees, if there is not a council of employees at the employer.

#### Other significant changes

The change itself will also affect the temporary assignment of employees, as from December 1, 2011 employees can be assigned only for a fixed period of time (maximum of 5 years). In Hungary, it will also now be possible for all agencies based in other EU / EEA countries to provide employment intermediary activities.

Also, there will be a mandatory salary increase as a consequence of the increase in taxes on personal income (the income of employees whose salary does not exceed 250 000 HUF will be reduced by this new taxation). This reduction will be reimbursed by employers, who will have to increase salaries of employees by the rate stated by the government.

There is also a new possibility to extend the employee's working hours to up to 44 hours per week for a maximum period of one year without a salary increase (in case of the excess of this period, the employer shall have to pay the employee a compensation in the amount of 3 monthly salaries). Newly, it is the employer's obligation to justify the recalling of a pregnant managerial employee from her working position from the time of conception to the end of maternity leave.

#### THE SUPREME COURT OF THE CZECH REPUBLIC

*On June 16, 2011 the Supreme Court of the Czech Republic delivered a judgment, which declared a dismissal*

*due to organizational changes as invalid, because the employer, along with the dismissed employees applied the so-called "švarcsystém".*

#### Judgment No. 21 Cdo 920/2010

In the present case, the plaintiffs, professional drivers, were dismissed due to organizational changes, because of the cancellation of their working position. The defendant, however, came up with an offer for these drivers to continue transporting people and objects as self-employed persons, based on the so-called "framework agreement on the transportation of persons and objects." The transportation was to be exercised in vehicles belonging to the defendant and designated by its logo.

The Supreme Court was dealing with the nature of the framework agreement and

concluded that although the drivers provided the defendant with transportation as "entrepreneurs" on the basis of the concession deeds, such transportation was carried out in the defendant's vehicle and the defendant also bore the cost of maintenance and fuel for the vehicles. With regard to these facts, the Supreme Court did not consider the activity of the drivers as the activity of entrepreneurs – independent, carried out in their own name and on their own responsibility – but rather as dependent work, seeing that from the analysis of the framework contracts, the Court found that the parties actually agreed on essential terms of the employment contract – the parties agreed on the place of work, the beginning of the contract (de facto the commencement of work) and the object, consisting of the implementation of transport (i.e. the type of work).

Therefore, the Supreme Court deemed the mentioned framework agreement on the transport of persons and objects as a simulated legal action to conceal a valid employment contract. Other facts agreed by the parties, such as the fact that the drivers did not have a designated working time, the Court considered only as an agreement on other working conditions.

#### LESSONS LEARNED

"Švarcsystém" is still commonly practiced in many companies. These should, however, reconsider their position, because the employer is obliged to arrange employment for all activities that are considered dependent work. In addition, the Chamber of Deputies is now discussing the amendment to the Employment Act, under which the performance of dependent work in other than an employment relationship shall be considered as illegal work, with the possibility of imposing sanctions by the Labour Office in the amount of up to CZK 5,000,000.

**Randl Partners**  
advokátní kancelář attorneys at law

City Tower  
Hvězdova 1716/2b  
140 78 Praha 4

Tel.: +420 222 755 311  
Fax: +420 239 017 574

E-mail: [employment@randls.com](mailto:employment@randls.com)  
Internet: [www.randls.com](http://www.randls.com)

**lus Laboris** Global Human Resources Lawyers

This issue of HR News for prepared for you by:  
Nataša Randlová / Ondřej Chláda / Barbora Suchá