

EMPLOYEE'S AGE AS A NEW GROUND FOR NOTICE OF TERMINATION

Termination of employment relationship with an employee is one of the most restrictive institutes constraining the employer, as well as one of the employee's strongest guarantees. While the employee may terminate the employment relationship with the employer

without stating a reason, the employer may terminate the employment relationship with the employee exclusively on exhaustively defined grounds. Extending the grounds for termination of employment relationship with an employee represents an extension of the employer's rights, but in a way also a reduction in the employee's social guarantee. On January 1, 2022, an amendment to the Labour Code will enter into force, which will extend the grounds for termination of employment relationship by notice given by the employer on the grounds of age of the employee. The definition of the grounds, the conditions for its application and whether such grounds are discriminatory are presented by specialists in labour law from the law firm SOUKENÍK – ŠTRPKA, s. r. o. - senior attorney, **Andrej Guba** and junior associate, **Michael Válek**.

NOTICE OF TERMINATION DUE TO THE AGE OF THE EMPLOYEE

From January 1, 2022, the grounds for which an employer may give notice to an employee are extended by a relatively controversial reason, which lies in the age of the employee. According to the amendment to the Labour Code, the employer will be entitled to give notice to an employee on the grounds that the employee has reached the age of 65 and concurrently the age designated for entitlement to a retirement pension. It is therefore not sufficient to reach the age of 65, or only to reach the age designated for entitlement to a retirement pension, but these conditions must be met cumulatively.

If the employer terminates the employment relationship with the employee due to age by agreement instead of giving a notice, this fact (this ground) must be explicitly stated in the agreement. The amount of severance pay for the termination of employment relationship will also depend on the choice of the method of termination of employment relationship on the grounds of age (by agreement of the contracting parties or termination by notice given by the employer). While in the case of termination of employment relation-

ship by notice given by the employer the employee is entitled to severance pay only after he/she has worked for the employer for at least two years, in case of termination of employment by agreement due to age, the employee is entitled to severance pay even if he/she has worked less than



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two years. Termination of employment due to age by agreement also affects other amounts of severance pay, which would otherwise belong to the employee in the event of termination of employment by notice, and which increases by one average monthly earnings of the employee. For example, if an employee has worked for the employer for three years, according to the Labour Code in the event of termination by notice he/she would be entitled to severance pay in the amount of one average monthly earnings, but in the event of termination of employment by agreement, he/she is entitled to severance pay two times his/her average monthly earnings.

ESTABLISHED AGEISM

Termination on the grounds of age is a novelty in the Labour Code, but it is not a novelty in the legal order of the Slovak Republic. Certain, although not a purely labour-law parallel can be found in the original wording of the Constitution of the Slovak Republic regarding the termination of judge's office. According to the wording of the Constitution of the Slovak Republic effective until December 31, 2020, a judge may have been recalled if he/she reached the age of 65. In the current wording of the Constitution, the regulation of the termination of a judge's office is even stricter, as such discretion has been repealed and the office of judge automatically expires on the last day of the month in which the judge reaches the age of 67. Although the age limit has been advanced by two years, the optional possibility of recall has been transformed into the automatic termination of the office.

A similar legal regulation is also contained in the Act on Public Service, in which the termination of the civil service relationship is bound only to reaching the age of 65, or in the Act on Pedagogical Employees and Professional Employees, where automatic termination of employment is bound only to reaching the age of 65. However, it is important to point

out that, unlike judges, it is possible to extend the employment or civil service relationship of these employees under certain conditions.

LEGAL DISCRIMINATION?

Despite the fact that the termination of employment only because of reaching a certain age may appear to be highly discriminatory, certain frameworks of exceptions are contained both at the level of Slovak law and European law. These frameworks establish when discrimination can be justified, among other reasons, on grounds of age.

Pursuant to the Council Directive 2000/78/EC, differences of treatment on grounds of age shall not constitute discrimination, if *"within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary."* Similar liberation grounds for discrimination are defined in the Slovak Anti-Discrimination Act.

The amendment proposed by the member of the Slovak parliament, which has made this new ground for termination by notice part of the amendment to the Labour Code, justifies the introduction of the grounds of notice given to an employee due to age mainly in an effort to execute inter-generational staff exchange, improve the employment of secondary school and university graduates and support of the overall employment. The aim is to create a balanced age structure in order to support employment and social support for employment and the labour market in order to reduce overall long-term unemployment.

IS THE DIE CAST?

The amendment to the Labour Code, which extends the grounds for termination of employment by notice given by the employer, has already been promulgated in the Collection of Laws of the Slovak republic, but its effectiveness may still be revoked. In June 2021, a group of members of the parliament addressed this amendment to the Constitutional Court of the Slovak Republic, arguing that the conditions for introducing this negative discrimination are not met - precise, clear and unambiguous identifica-

tion of the specific objective that is pursued by differentiating age and, in addition, to demonstrate sufficiently that such differentiation is necessary for the attainment of the objective.

Based on the heretofore valid and effective legal regulations, in our opinion the submission to the Constitutional Court of the Slovak Republic by the members of the parliament represents rather a political attempt to make themselves visible than a serious legal interest. The new regulation of termination of employment on the grounds of age in the Labour Code does not significantly differ from the regulation of termination of employment or civil service on the grounds of age pursuant to the Act on Pedagogical Employees and Professional Employees and the Act on Public Service. Apart from the fact that these acts were passed by political parties whose members of parliament are now filing a motion with the Constitutional Court to review the amendment to the Labour Code, the justification of these acts with regard to termination of employment relationship or civil service on the grounds of age was much more frugal when adopted by the National Council than justification of the current amendment to the Labour Code.

Moreover, compared to these special regulations, the Labour Code is more flexible, as it establishes only the possibility for the employer to give notice to the employee, which, however, the employer does not have to execute at all.

If the Constitutional Court of the Slovak Republic upholds the proposal of members of the parliament on the grounds on non-compliance of the amendment to the Labour Code with the Constitution of the Slovak Republic and relevant human rights conventions, the new ground for termination will not take effect at all or will cease to have effect if the Constitutional Court decides on the matter after on this part of the amendment to the Labour Code the after it takes effect. If the Constitutional Court of the Slovak Republic does not uphold the proposal of the members of the parliament, it is reasonable to assume that the employer will not dismiss employees whose value for the employer lies within their positive contributions to the employer's activities, because the only thing that matters is not the employee's age, but the employee's strengths. An employer may dismiss an older employee, but the employer is unlikely to dismiss a quality employee, regardless of age.



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