Assoc. prof. JUDr. Andrea Olšovská, PhD.
Faculty of Law, University of Trnava, Slovakia
JUDr. Marek Švec, PhD.
Faculty of Social Sciences, University of SS. Cyril and Metodius in Trnava, Slovakia

Strike Action at the Forefront of the Social Partners' Agenda

Abstract

The article presents strike legislation in the Slovak Republic. It primarily draws attention to the two admissible types of strikes: a Constitutional and an industrial (working) ones, where each has its own specific rules. A Constitutional strike is regulated only by the Constitution, without any special conditions for its implementation, whereas the industrial one can be realized only in the process of collective bargaining in a collective dispute. The Authors point out negative practical consequences of this legislation duality, in particular with regard to the principle of legal certainty and subsequent employee's responsibility when the employer questions the strike's legality. The Authors remind about the interest of employer's representatives in adopting a special law which would comprehensively regulate the issue of the right to strike in the Slovak Republic. The problem has its specific form in case of an employer with foreign capital, who hardly perceives the legal framework of the employee's right to strike.

Key words: *the right to strike, collective bargaining, employer, employee, Constituion, collective dispute, legal certainty, employee's responsibility.*

Strajk wśród najważniejszych spraw na porządku dziennym partnerów społecznych

Streszczenie

Artykuł omawia ustawodawstwo w zakresie strajku, obowiązujące w Republice Słowacji. Na początku Autorzy zwracają uwagę na istnienie dwu dopuszczalnych rodzajów strajków: konstytucyjnego i przemysłowego (pracowniczego), z których każdy funkcjonuje

według własnych, specyficznych reguł. Strajk konstytucyjny regulowany jest wyłącznie przez postanowienia ustawy zasadniczej, która nie stanowi o żadnych szczególnych warunkach jego wprowadzenia, podczas gdy strajk pracowniczy może zostać rozpoczęty jedynie w razie sporu podczas negocjacji umowy zbiorowej. Autorzy wskazują na negatywne konsekwencje tego dualizmu ustawodawczego w praktyce, w szczególności odnoszące się do zasady pewności prawa oraz wynikającej z niej odpowiedzialności pracowników w sytuacji, gdy pracodawca kwestionuje legalność strajku. Autorzy przypominają o interesie leżącym po stronie przedstawicieli pracodawców w uchwaleniu odrębnej ustawy, która w sposób zrozumiały uregulowałaby zagadnienia związane z prawem do strajku w Republice Słowacji. Problem ten nabiera specyficznego wymiaru w przypadku pracodawcy z kapitałem zagranicznym, który nie uświadamia sobie podstaw prawa pracowników do strajku.

Słowa kluczowe: *prawo do strajku, negocjowanie umowy zbiorowej, pracodawca, pracownik, konstytucja, spór zbiorowy, pewność prawa, odpowiedzialność pracownika.*

Introduction[1]

Now, that the economic crisis is already over, a period of improvement can be expected not only in terms of macroeconomic indicators, but also in terms of employees' working conditions. Statements of this kind are increasingly becoming the vocabulary of Slovak politicians aiming to offer some positive prospects for the future. But unfortunately, the reality is different. In collective bargaining for wage increases and other benefits, trade unions are now regularly confronted with a strong rejection of any claims which could bring an improvement of working standards of employees. To paraphrase the current situation in the Slovak Republic, we paradoxically have to say that in spite of the economic crisis being over and companies achieving better results, for example in the growth of international orders, the tendency is to a significantly more difficult collective bargaining on the company level, as well as on the sectorial one.

The social situation of employees is characterized by low wages, long hours of overtime work and a growth in "non-standard" labour law relationships, which is of course reflected also in the level of satisfaction with their professional and private life[2]. This is why their responses to any further demands from employers are beginning to be very emotive, and

[1] This scientific contribution was developed within the research project VEGA 1/0423/14 titled: "Labour Law Act and Its Possible Variations".

[2] Zaušková, A. – Madleňák, A. *Communication for open innovation. Towards technology transfer and knowledge diffusion*. Ksiezy Mlyn: Dom Wydawniczy Michal Kolinski, 2014, pp. 13.

a solution in the form of calling a strike as the one and only means of exerting pressure on employers comes to the fore ever more often.

What is unusual of such an attitude, is the fact that for the last twenty years of Slovak democracy, there have been barely any significant strikes staged by employees. Slovak employees are therefore known as rather submissive, since their fear of possible retaliatory measures on the part of employer often forces them to give in to pressure from their employer and they thus fail to achieve their demands. Considering our own practical experience mainly from the last year, we must say that this has been changing significantly.

In this respect, it should be pointed out that regarding also the practical dimension of failing to call a strike, there are some fundamental problems in the field of labour law and, most importantly, the legislation governing strike action.

These problems subsequently represent not only a source of legal uncertainty about the legitimacy of the strike, but also a subject of concern for employers seeking to draw labour law consequences against the employees on strike, since the situation varies depending on whether the strike is viewed as an industrial or a constitutional one. Incorrect assessment of the practical situation from the perspective of the existing legislation is very frequent as well (dualism of the right to strike in the SR), followed by incorrect action taken by both employers and strike participants evaluating the terms and rules of the intended strike. This action is becoming significant mainly for the foreign companies operating in the Slovak Republic which often fail to distinguish sufficiently between various types of strikes, which causes them troubles in relations with their own employees. Resulting from the practical problems, as well as from the legal *status quo*, considerations of adopting specific legislation on the right to strike emerge, raising tension and controversy among the social partners[3].

I. Constitutional and Industrial Strike

The legal order of the SR recognizes two types of legal basis for the right to strike, i.e. art. 37 sect. 4 of the Constitution of the Slovak Republic and art. 16 of Act no. 2/1991 Coll. on Collective Bargaining (hereinafter the "ACB"). The right to strike provided for by the Constitution of the SR represents the fundamental general legislation governing the strike action in the legal order of the Slovak Republic. The Constitution of the Slovak Republic lays down that "The right to strike shall be guaranteed. The terms thereof shall be set by law" (constitutional strike). Along with this general specification, there is one more definition of

[3] Mura, L. *Performance of Human Resource Management in an Internationally Operating Company*. In "Serbian Journal of Management", 2012, No.1, pp. 115-129.

the right to strike to be found in the legal order of the SR, referred to in art. 16 sect. 2 of the ACB as "a partial or complete interruption of work on the part of employees" (industrial strike). With regard to this unclear legal situation, there has been an ongoing dispute among the legal experts which spans several decades. The question is whether the existing Act on Collective Bargaining is indeed the law envisaged by the Constitution of the SR or whether the definition of the right to strike referred to in the ACB is only a specific provision pertaining to the right to strike in connection with the process of collective bargaining[4].

As regards to the above mentioned dispute, two strong bodies of opinions have been established, which generally maintain their views and it can be stated that the opinion presented in this article concurs with the majority opinions. The first body of opinions considers the Act on Collective Bargaining to be the act envisaged by the Constitution of the SR, i.e. the law which lays down conditions for the exercise of the right to strike in the Slovak Republic. The only permitted and legitimate strike in the SR is solely the industrial one provided for by the Act on Collective Bargaining, which is immediately associated with the right to collective bargaining and with a disagreement of the social partners on the content of the collective agreement. It is predicated on the doctrine of basic human rights and freedoms in the sense that their exercise in the society is not unlimited. The economic, social and cultural rights are hence not absolute and the possibility of their exercise is in fact restricted. The legislator must determine in the law what kind of strike is acceptable, as well as on which conditions. Another interpretation would, according to its proponents, lead to an unfettered exercise of human rights (the right to strike) causing possible economic damage to the employer. This kind of strike can thus be organised only in connection with the nature of the dispute which is subject to the collective bargaining[5].

The second strong body of opinions is, on the other hand, based on the premise that specific legislation, which would provide for the strike envisaged by the Constitution, has not yet been adopted. According to this view, the Act on Collective Bargaining lays down only one of the possible types of strikes, regarding the collective bargaining. Its proponents consider the right to strike guaranteed by the Constitution to be a means of safeguarding also those rights and legally protected interests, which are other than the ones on the current agenda of collective bargaining between the employer and the trade organisation. This viewpoint is based on the protection of economic and social rights (interests) of

[4] H. Barancová, *Zákonnik práce,* C. H. Beck, Praha 2012, p. 850.
[5] J. Drgonec, *Základné právo na štrajk: rozsah a podmienky jeho uplatnenia v právnom poriadku Slovenskej republiky*, "Justičná revue" 2007, No. 6-7, pp. 759-780.

citizens/employees also with respect to subsuming the right to strike within art. 37, or the fifth chapter, among the economic, social and cultural rights defined by the Constitution of the SR. In this context, the right to work can also be safeguarded by means of the right to strike according to the Constitution of the SR (for example if the employer plans to shift the production to another country, which is a common practice). This, however, would not be possible according to the first body of opinions (this issue is usually not subject to collective bargaining, as it is not immediately associated with the working conditions).

A supportive legal argument for the second body of opinions is also found in the decision of the Supreme Court of the SR. It follows from the decision of the Supreme Court of the SR (Ref. no. 1 Co 10/98) that "every citizen of the Slovak Republic shall have the right to strike. The lack of legislation which would lay down the conditions on the exercise of this right (the right to strike) also outside the collective bargaining process, cannot lead to questioning the existence and realisation of the constitutional right to strike". The Supreme Court further reasons that the right to strike is one of the basic human rights and freedoms. It is covered by art. 12 sect. 4 of the Constitution of the SR, according to which the rights of noone can be abridged on account of exercise of basic rights and freedoms. This constitutional right must also be interpreted in accordance with the constitutional principle referred to in art. 2 sect. 3 of the Constitution of the SR, pursuant to which everybody is free to do anything which is not prohibited by law and, on the other hand, nobody should be forced to do anything which the law does not impose.

Thus the legal order of the Slovak Republic does not contain an act which would, with the exception of Act no. 2/1991 Coll. on Collective Bargaining, restrict or prohibit the right to strike. The assertion that any strikes other than the ones provided for by the implementing regulation (Act. no. 2/1991 Coll.) should be prohibited does not follow from any legal provision, nor can it be supported by the interpretation of art. 37 sect. 4 of the Constitution of the SR (Ref. no. 1 Co 10/98). The lack of specific legislation envisaged by art. 51 of the Constitution of the SR, according to which the right to strike can be claimed only as defined by specific law, does not, according to the Supreme Court of the SR, constitute an obstacle to the exercise of one's right to strike, since it is anchored within the actual wording of the Constitution of the SR. Should the exercise of one's right to strike be deemed as impossible if not grounded in specific legislation, the right to strike would become only a quasi-constitutional right. In spite of the fact that it would be provided for by the Constitution of the SR, in reality it would be introduced only by an act, i.e. by a subordinate provision. According to the Supreme Court of the SR, art. 11 of the Constitution of the SR has to be taken into

account, too, since it specifies the conditions of primacy of international treaties on human rights and freedoms over the legislation of the SR, provided they ensure a greater extent of basic rights and freedoms. The International Covenant on Economic, Social and Cultural Rights contains a provision in art. 8 point d) stating that the Member States of the Covenant undertake to ensure the right to strike, provided it is exercised under the laws of the country concerned. Art. 51 of the Constitution of the SR merely presupposes that a specific legislation will be adopted, it does not exclude the exercise of the right to strike if there should be no such legislation. In this case, the lawfulness is not expressed explicitly, but it is based on a possibility of exercising one's subjective right without determining any exact methods of doing so. The Supreme Court points out furthermore that the lack of specific legal framework also results in the fact that those on strike do not have the opportunity to enjoy the benefits and protection which is provided, in contrast to the Constitution of the SR, by the ACB.

Similarly, the Government of the SR in its Resolution no. 965 of 4 September 2002 also has expressed an opinion on the complaint of the International Labour Organisation with regard to limiting the right to strike solely to the field of collective bargaining, stating that strikes not covered by the ACB are permitted under law, too. It argues that no act has been adopted which would prohibit such strikes and that strikes in their nature can be intended also to improve the working or living conditions of employees. The position of the Government of the SR was based on the later introduced and more closely specified principles of the International Labour Organisation on the right to strike, which clearly declare that according to the conventions and recommendations of the ILO the right to strike may not be limited exclusively to labour disputes which are likely to be resolved through the signing of a collective agreement. The right to strike may also be exercised in case of seeking solutions to economic and social policy questions[6].

II. Organising of Strikes in Practice

First of all, we would like to point out the fact that the ways of exercising the right to strike will differ with regard to the established majority opinions on the differentiation of the right to strike as an industrial or a constitutional one.

[6] B. Gerninon, A. Odero, H. Guido, *Principles Concerning the Right to Strike*, Genova: ILO, 1998, pp. 1-5.

The Right to Strike under the Act on Collective Bargaining – Industrial Strike

Pursuant to the Basic Principles covered by art. 10 of the Labour Code, employees and employers have the right to collective bargaining. In case of a conflict of their interests, employees have the right to strike and employers have the right to a lockout. The strike provided for by the ACB is considered as a last resort of resolving a collective dispute which has arisen in connection with concluding a collective agreement. The precondition to be met is the failure to conclude a collective agreement, even after proceedings before a mediator. It is assumed at the same time that the contracting parties will not ask an arbiter to settle the dispute, since they have not agreed on such a person in a manner required. In view of the fact that a strike has various consequences for employees and employers, as well as for other entities, the ACB lays down detailed terms of how a strike may be called and staged.

As stipulated by the Act on Collective Bargaining, legal assessment of a strike as legitimate presupposes that the following conditions were met:

a) existence of a competent entity – the only entity considered competent to call a strike is the appropriate authority of the trade union organisation operating under the particular employer, or the appropriate higher authority of a trade union (i.e. the trade union federation) in case of a sectoral collective agreement. The trade union body – Committee of the basic trade union organisation – is the executive body of the trade union organisation. In the process of collective bargaining, it defends interests of all employees, not just of its members. It is precisely this entity that decides to call a strike by a resolution. Terms of this resolution are not provided for by any law, but they may be contained in an internal document of the trade union organisation, for example in its statutes or rules of association. The resolution is normally written and adopted by an absolute majority of Committee members present (the executive body). Adopting the resolution is preceded by employees' vote on strike. The resolution on calling a strike serves for internal use of the trade union organisation which is definitely not obliged to send it to the employer or to any other entity. Following the adoption of the resolution, the next stage involves informing members and employees either orally or in writing (information leaflets). It is important to draw a distinction between an entity empowered to call a strike and a strike participant. The strike participant is, for the entire duration of the strike, an employee (not necessarily a member of the trade union organisation) who has agreed with the calling of the strike, as well as an employee who has joined the strike (is thus considered as a strike participant only from the day he joined the

strike). The right to participate in a strike, i.e. to interrupt work, is guaranteed to every employee as an individual. In view of the foregoing, the ACB provides an exhaustive list of entities which are not given the competence to exercise the right to strike by means of a trade union body in art. 20 sect. 2. Strike action taken by civil servants appointed as superiors and by those performing service tasks directly related to the protection of life and health, would be considered as illegitimate if their participation in the strike could put the life and health of the population at risk;

b) a strike can be called only in the event of a dispute over the conclusion of a collective agreement. It is clear from the wording of this provision that in case of a breach of obligations under the validly concluded collective agreement, a strike cannot be considered as a last resort, since it is "limited" solely to instances when such conclusion is impossible. Except for a strike, there is thus no other legal mechanism by means of which employees could reach a collective agreement. Following the above, the legislator therefore granted employees the right to strike as a compensation mechanism for resolving a collective dispute caused by a failure to conclude a collective argument. On the other hand, employers were granted the right to a lockout as an alternative to the resolution of a dispute over the breach of obligations under the collective agreement. As opposed to the collective dispute caused by a failure to conclude the collective argument, in a collective dispute over the breach of obligations under the collective agreement, the legislator empowers employees to claim protection of their rights through legal proceedings. The reason is that their protected right is contained in the wording of the concluded collective agreement. Moreover, with reference to art. 4 sect. 1 point e) of the Act no. 71/1992 Coll. on Court Fees and Fee for the Extract from the Criminal Register as amended, the legislator exempts these legal proceedings from court fees;

c) the calling of a strike must be preceded by unsuccessful proceedings before a mediator, also providing that the contracting parties have not submitted an application for dispute settlement before an arbiter or that the contracting parties have not agreed on the person of the arbiter. Proceedings before a mediator is a mandatory procedure preceding the calling of a strike. A mediator is an independent person who should examine arguments of both parties and try to reach a mutual agreement. Proceedings before a mediator is considered unsuccessful only if the dispute over the conclusion of a collective agreement has not been resolved within 30 days from the date of the receipt of the application for dispute settlement or the decision designating the person of the arbiter. Proceedings before an arbiter is alternative to the calling of a strike after the proceedings before a mediator has been proven

unsuccessful. The arbiter represents an independent person who is, at the joint request of both parties, empowered to determine authoritatively the contested content of the collective agreement. Upon the receipt of his decision, the collective agreement is considered concluded;

d) a trade union body, or a higher trade union body, can call a strike only if it is supported by the required consent of an absolute majority of employees of the employer who have taken part in the vote on strike (the so-called protocol on the calling of a strike). At the same time, an absolute majority of all employees of the employer is required to vote. In practical terms, this means that all employees of the employer bound to him by an employment relationship take part in the vote. The number of employees also includes those on a maternity or parental leave, as well as those employees who are temporarily unable to work. As a rule, the vote on strike can be either secret or public (by acclamation). The Act on Collective Bargaining does not lay down any other attributes of the vote. The requirement for a secret vote logically raises the question as to which form the vote should take. Since the secrecy of voting involves determination of anonymous attitudes, the form of voting will be identical with the form of any other polls. The result will be ascertainable from unmarked ballot papers which will be cast by employees at designated points. The appropriate trade union body will draw up minutes about the result of the vote. The documentation about the results of the vote on strike is kept for three years, given the fact that there is a possibility of the legitimacy of the strike being examined by the court;

e) the appropriate trade union body is obliged to notify the employer in writing within not less than three working days before the beginning of the strike of the start date of the strike, reasons of the strike, its aims and the nominal list of representatives of the appropriate trade union body who are empowered to act on behalf of strike participants (the so-called composition of the strike committee). The trade union body is obliged to notify the employer in writing also of any changes in this nominal list of representatives. The law does not provide for the delivery form of the written notification of the employer, but it is assumed that the employer should have the notification of the above facts within his power of disposal for at least three days before the strike. Lodging of the notification at a post office on the "last" third day before the beginning of the strike does not suffice. Compliance with this time limit is one of the conditions for examining the legitimacy of the strike and so the notification considering the rules for calculating the time limits specified must be delivered.

f) the appropriate trade union body is obliged to notify the employer in writing within not less than two working days before the beginning of the strike of all information related to

the strike which is known to it and which will help the employer establish timetables of work for ensuring essential actions and services throughout the strike. Essential actions and services may be considered to be all the actions and services, interruption or cessation of which could be a threat to the life and health of not only employees but also other persons, as well as cause damage to machinery, instruments and devices, the character or purpose of which renders their operation impossible to be interrupted or ceased during a strike.

Representatives of the trade union body are empowered to represent strike participants; however, they are obliged to allow a safe and appropriate access to the workplace of the employer for all employees. Preventing employees from doing their work, from accessing and leaving their workplace or threatening them with any kind of harm can be thus considered to be in breach of the provisions referred to in the Act on Collective Bargaining.

The employer is not allowed to take on new employees as a replacement for those on strike (the so-called strikebreakers).

Further obligation of the trade union body which has decided on the calling of a strike is to provide the employer with all the necessary cooperation for the entire duration of the strike. This obligation of cooperation concerns, first and foremost, ensuring the protection of equipment against damage, loss, destruction or misuse. It also concerns ensuring the essential actions and operation of devices, character and purpose of which requires this with regard to safety and health or possible damage to this equipment.

The ACB also sets out the reasons which lead to the strike being considered as illegal. We must be aware that each of these reasons alone can render the strike illegal, they do not necessarily have to occur cumulatively. According to the above mentioned provision, a strike is considered as illegal if it has not been preceded by a proceedings before a mediator, if it has been called or pursued after the initiation of the proceedings before an arbiter, after the conclusion of a collective agreement, etc. The strike of certain working positions specified by law would also be considered to be illegal by the court. This concerns for example the employees of healthcare facilities or social welfare facilities, provided that their participation in the strike would put the life or health of the population at risk, employees of the nuclear power plants, judges, prosecutors, members of the armed forces and armed corps, members and employees of fire brigades and rescue squads etc.

Where there is a suspicion of an illegal strike being staged, the employer, employers' organisations (e.g. an employers' association) or the prosecutor may file a motion to determine the illegality of the strike. This motion is filed before a court competent according

to the registered office of the trade union body against which the motion is directed. This motion has no suspensory effect, i.e. the strike can continue even after such motion has been filed, whilst the filing of the motion has absolutely no influence over the duration and course of the strike. In this respect, it should be pointed out that an unsuccessful outcome of the strike has no effect on its legality or illegality, as an unsuccessful strike cannot be equated with an illegal strike.

The Right to Strike within the Meaning of the Constitution of the Slovak Republic

Even though the legal order of the Slovak Republic lays down the statutory rules on strikes only in respect of concluding collective agreements, it cannot be ruled out that a strike as a collective action within the meaning of the Constitution of the SR may be also used to enforce the economic and social interests (not political). In practical terms, this means that the provisions of the ACB pertaining to the conditions of staging an industrial strike are used analogically also in organising strikes pursuant to the Constitution of the SR. In this case, however, these provisions are not mandatory and their absence does not render the strike illegal. The entity to call a strike within the meaning of the Constitution of the SR does not necessarily have to be a trade union organisation, even despite the fact that it operates in the enterprise where the strike is to be staged. In this case, the strike is called by the so-called "strike committee" which cannot be unambiguously equated with a trade union organisation. This strike committee is the body which does not only call the strike, but also organises its course. Should the strike be declared illegal, it is the strike committee that would be held responsible. It is therefore important to clearly identify the composition of this committee. Since there is no legislation that would provide for the strike within the meaning of the Constitution of the SR, neither the size of the strike committee is specified. However, it is assumed that it will consist of at least two citizens, although it cannot be entirely ruled out that the organiser of the strike may be a single person.

The fact that the strike committee does not notify the employer of the beginning of the strike in advance does not render the strike illegal. The calling of this strike is not preceded by a vote taken by all employees, but it cannot be perceived as detrimental, should the strike organisers want to determine real support and willingness of employees to participate in the strike. The practice shows that the vote on strike does not necessarily mean that all the

employees who vote for a strike actually do participate in it. We must also take into account the fact that the participants of a constitutional strike do not have to be only the employer's employees, but also all the citizens who are interested in achieving the stated objective of the strike.

The lack of a vote on strike does not constitute a legal obstacle to the fact that its potential participants contribute to the dissemination of information concerning its planning, start date, duration and other essential facts, either in person or by means of leaflets, posters, electronic media, etc. The form and way of informing cannot be generalized and they will vary according to the character, kind, duration of the strike and, last but not least, also the nature of claims pursued through strike action.

The legitimacy of this kind of strike is neither affected by the fact that there have been no proceedings before a mediator or an arbiter. In examining the legitimacy of the constitutional strike, it should be pointed out that it can be staged also in cases other than those concerning disputes over the conclusion of a collective agreement, as well as in cases when such a dispute is pending. The aim of this kind of strike is the protection of social, economic and any other interests of employees or citizens, notwithstanding the fact that the respective employer has validly concluded a collective agreement. A strike within the meaning of the Constitution of the SR can also be staged during the process of collective bargaining, provided that its central objective is not the conclusion of a collective agreement. Its staging is also possible during the validity period of a collective agreement with the employer, even if it includes the above mentioned provision on the prohibition of industrial actions and strikes. We are of the opinion that the reason of a constitutional strike should not be the achievement of an aim which can be included in the collective agreement or negotiated in the process of collective bargaining.

Labour Law Aspects of a Strike

Regardless of the type of the strike, a question regarding the social security of an employee during a legitimate strike arises. The right to strike is the right of every employee to interrupt work in an organised manner and participate in a strike. Employees cannot be prevented from participating in the strike, nor can they be forced to participate. A legitimate strike is not considered as professional misconduct (a breach of obligations resulting from the legal order or employment contract). Participation in a legitimate strike does not constitute a reason for dismissal leading to the termination of employment, whereas under art. 141 sect.

8 of the Labour Code, the employer is obliged to excuse employee's absence from work during the time of his participation in a strike concerning the exercise of his economic and social rights, whilst he is not entitled to any wage or wage compensation for this time. As stipulated by art. 109 sect. 3 of the Labour Code, participation in a legitimate strike ultimately does not constitute a reason for reducing employee's leave due to an unexcused missing of a shift. Penalising or any other form of sanction for staging or attempting to stage a legitimate strike is deemed inadmissible. Termination of employment on the grounds of the exercise of one's right to strike, i.e. a legal union activity, means discriminatory treatment in employment.

In the legal order of the SR, employee's participation in a strike is regarded as an unexcused absence from work only after the decision of a court declaring the strike illegal has become final. In the case where the strike lasted for several days and the employee participated in it for its entire duration, however, the strike was declared illegal; employee's unexcused absence from work can even constitute serious professional misconduct once the decision declaring the strike illegal has become final. Pursuant to art. 68 sect. 1 point b) of the Labour Code, this can also result in immediate termination of employment by an employer.

Further labour law aspect of participating in a strike is the employee's material security during the strike. It follows from art. 141 sect. 8 of the Labour Code that the employee is not entitled to any wage or wage compensation for the time of participation in the strike. It is characteristic of a striking employee that he does not receive any wage or wage compensation during the strike.

The issue of material security for the duration of a strike is, as a rule, addressed in the form of the provision of a financial contribution from the resources of the trade union organisation. The rules, conditions, extent and group of persons who are entitled to the provision of material security during a strike are a matter of the trade union organisation (e.g. amassing a strike fund for providing compensations during a strike upon the satisfaction of specified conditions).

Final Considerations

The outlined problems of businesses concerning their perception of the right to strike along with the seemingly deficient legislation mostly regarding the constitutional strike have become a significant subject of concern for social partners over the past year. As a result,

employers' representatives demand that the current legal framework be reevaluated and specific legislation be adopted, which would provide for the exercise of the right to strike in general, i.e. not only in terms of concluding a collective agreement. Even though the debate on this topic has been very intensive, the trade unions are against such a law and the legislator has adopted an officially neutral stance. As a result of this situation, it is not even possible to predict the future developments. In this context, however, an analogous situation in the Czech Republic should be pointed out; where a similar issue concerning the lack of legislation on the conditions of the exercise of the right to strike was addressed in 2012 (there is a similar distinction between a constitutional and an industrial strike drawn in the Czech Republic). The Ministry of Justice of the Czech Republic has prepared a draft law on strike action; however, numerous substantive comments were made in the course of the adoption of the draft, ultimately rendering the entire legislative process unsuccessful. The issue which proved particularly problematic was the inadmissibility of an analogy between the conditions of an industrial and a constitutional strike, as decided by the Czech courts. This concerns the impossibility of applying the conditions of the staging of an industrial strike to the staging of a constitutional one (e.g. different information obligations of employees to the employer, groups of entities empowered to call a strike, requirements for obtaining the required number of votes – an absolute majority of all employees, etc.).

Designing the legislation governing the right to strike is hence not a simple matter. With regard to the substantial identicalness of the legislation governing the right to strike in the Slovak and Czech Republic, where there is a common legal history, similar legal problems can be expected.