

Current challenges in Czech Labour and Social Security Law in historical context (opening address)

by
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Mr. President of the Senate of the Parliament of the Czech Republic,

Your Magnificence, Mr. Pro-Rector,

Spectabilis, Mr. Dean,

Ladies and Gentlemen,

Dear Colleagues,

Let me heartily welcome you here, in Grand Hall of the Carolinum, in Prague, on behalf of the entire Organizing Committee of the 12th European Regional Congress of the International Society for Labour and Social Security Law 2017.

Before I devote my time to the topic of my short lecture on the “Current challenges in Czech labour and Social Security law in historical context”, please allow me as the Chairman of the Organising Committee of this 12th European Regional Congress and the President of the Czech Society for Labour Law and Social Security Law, to express my thanks to all the members of the Organizing Committee for their diligent work in preparing this congress.

I don't want to burden the honoured audience with statistical data, but I would like to inform you that (of course, outside of Antarctica) representatives of all continents are attending our meeting. Altogether 260 participants were registered to attend the congress so far.

Now, let me, ladies and gentlemen, express my thanks to the President of the Senate of the Parliament of the Czech Republic Milan Štěch and the Charles University Rector Professor Tomáš Zima (today represented at this meeting by the Vice-Rector Professor Aleš Gerloch) for auspices which they kindly provided to the meeting of our congress. Our thanks also belongs to the Dean of the Law Faculty of Charles University, to Professor Jan Kuklík for the possibility to hold the Thursday and Friday congress meetings in the building of the Law Faculty of Charles University.

Now some remarks about the historical context of the place where we stand, Charles University and also the history of the Czech state and about some current challenges standing not only before Czech labour law and social security law.

First remark - to historical traditions and sources

As already mentioned, today, we have met in the historical main building of Charles University, from the 14th century, named Carolinum. Here, before the statue of Charles the IV, the founder of the University, the King of Bohemia who also became the Holy Roman Emperor, it is possible to recall the fact, that the grandfather of Charles the IV - Wenceslaus II (King of Bohemia and King of Poland), in 1300, more than 700 years ago, issued the royal mining code, which was written in Latin and named *Ius regale montanorum*. This was a legal document that specified all administrative as well as technical terms and conditions necessary for the operation of silver mines, included rules which we could today classify as belonging to the area of legislation on safety and health in work.

Ius regale montanorum with its progress much ahead of its time, as evidenced by the fact that in the area of mining in the Czech lands it lost its force definitively up to and after 550 years, in 1854.

Ius regale montanorum had undisputed influence on the development of mining legislation in a number of European countries. It is also handed down that the translation of *Ius regale montanorum* into Spanish, made in the 1650s, was used to organize and manage the silver mines in South America, where it can be found in its footprints in some of the local mining legislations even to relatively recent history.

I mention this fact as evidence of the attention paid in the territory of the Czech Kingdom to legal regulation of certain aspects of the performance of work and its security 700 years ago.

Second remark - to less distant history and new challenges

One of the world-famous graduates of Charles University was the world renowned Czech writer Karel Čapek. He studied at this university in philosophy.

The personality of this great writer and dramatist is appropriate to remind us (in the occasion of this Labour Law Congress) of his play R.U.R. (Rossum's Universal Robots), in which he introduced the word "robot" and which the public met for the first time in 1921 at the premiere of Čapek's play. The storyline of the play R.U.R., which has been translated into more than thirty languages, begins at a factory producing robot-automatons. They were designed to serve people, but they were also gifted with independent thinking and the ability to make decisions in their favour¹. Nearly one hundred years ago, Karel Čapek warned us of the possible negative effects of technology, which could, despite the attempt for progress, lead up to the destruction of mankind.

Karel Čapek would be probably astonished today at how, during passage of time, a group of machines or various automatons, later called the robots, has become varied and increasingly wider; in relation to the congresses of our Society, I have fresh in mind the visit of the 21st World Congress in 2015, in Cape Town – I suppose I was not the only one who was surprised that the word "ROBOT" is in South Africa used as a designation for a Traffic Light.

Therefore, it is now appropriate to bring to the honoured audience one of today's world-famous words which originates from the Czech language - "robot" is derived from the Czech word "robota", which was in medieval time used for a type of unpaid, mandatory labour, performed only a certain

¹ See Řeháková E. *Kdo vymyslel slovo robot? Karel Čapek to nebyl!*, <https://factoryautomation.cz/kdo-vymyslel-slovo-robot-karel-capek-to-nebyl/>

number of days each year; work which was demanded by a feudal landowner from their vassals, to which the closest designation is perhaps “corvée”.

As concerns Karel Čapek's vision, we must then state that technical progress and its influences on day-to-day performance of work, has approached us today, significantly in some disciplines, to the moment of replacing human labour with a set of processes that would be closer to his vision. I consider it certainly appropriate that our congress will also devote time to these current trends connected with digitalization and automatization of production and to related changes in the labour market.

Many point to the fact that the consequences do not have to be dramatic for the overall job loss, that jobs that are lost will also in the so-called Fourth Industrial Revolution (as in previous industrial revolutions) be replaced by others, as the need for new professions and services will appear.

Many mention "taxing of robot's work" as a topic of the future, many ironize these opinions contrarily. In spite of differences of opinions on this topic, I regard the considerations about adaptation of tax systems to the possible massive disappearance of many jobs, more precisely human work, as legitimate (with the loss of jobs and wages and to the fact corresponding financial contributions to the withering social security systems will also fade). It is therefore right that attention will also be paid during the congressional talks, to for example the challenges of social security in the digital age as well as to the increasingly discussed issues of the guaranteed minimum income for all.

Third remark – to less distant challenges

The protection of jobs and labour-law standards achieved by employees in the past has been under pressure from the liberalization forces for many years. Let us look, for example, at the still inspiring report of the general rapporteur, in which Lance Compa in 2006 at the 18th World Congress of our organization in Paris, among others, stated that: “International investors insist that labour law flexibilization is needed for a friendly business climate. Executives of transnational companies insist that labour law flexibilization is necessary for them to be globally competitive.”²

Not too much has changed in those pressures on the flexibility of labour law since 2006; defenders of employee security face more and more inventive attacks calling for "flexibilization" and defend themselves by a shield of the – though rapidly popular, but – from the point of view of truly new approaches – not much enriching, concept of “flexicurity”.

As in any clash, however, the "defenders of the fortress" - in our case "the fortress of employee securities" - face the risk of tiredness, weakening or loss of many supports or traditional allies - the clash is long, the attackers have new resources and are often more inventive than defenders whose tactics can be in the course of time proven too conservative.

In addition, also the environment in which the clash is operating, is changing the endured cyclical crisis has brought new opportunities for job creators and, on the other hand, many traditional alliances or supports of employees are growing weaker, as well as their opinions on the suitability of such a wide rigid social protection; politicians in many cases are beginning to flirt with national protectionism, weakening or relativizing of concluded alliances, agreements and unions in favour of current election gains. While globalization continues from the point of view of investors, the fragile camp of occupational security defenders is weakened by signs of possible fragmentation.

² Compa, L. *Trade Liberalization and Labour Law. General Reports.* The XVIII. World Congress of Labour Law & Social Security Law, Paris, 2006.

Let us now look, for example, at two challenges which (not only) Czech labour law is facing. It is a practical application of agency employment and a phenomenon called "uberization" of work.

- a) Agency employment - experienced a significant development in the first decade of this century in the Czech Republic and is very popular with a broad group of employers. It is not only because of the lack of employees in some professions (and that not only before the crisis in 2008, but also today when the Czech Republic has the lowest unemployment rate in all European Union countries - 3,2% /Source: Eurostat/). It cannot be overlooked that to the popularity of agency employment also leads the fact that despite the rather rigid Czech regulation of labour law, which is relatively very "protective" in relation to ordinary employees, the position of agency employees in the Czech Republic can indeed be described as precarious – in compliance with the law they can be dismissed in principle "from day to day" without any entitlement to any statutory severance pay. If we in addition accept the fact that the agency employee costs the employer in practice less than the ordinary employee (despite the law) and that the temporary nature of agency employment is more a theory in the Czech Republic than the practical phenomenon, it is clear in what the popularity of agency employment in the Czech Republic lay (this also proves the fact is that we have had 10 times more registered employment agencies than roughly the same size Belgium not long ago). I am looking forward to contributions in the section devoted to agency employment and to the exchange of foreign experiences; perhaps it will be inspiring for our social partners; this area has long been on the edge of their interest. It turns out, however, that excessive adherence to the rigidity of protective legislation is sometimes counterproductive and directly encourages labour market actors to search for "sideways" and loopholes.
- b) As one of the sideways it is possible to designate some phenomenon in the area of the so named "shared economy" (sometimes referred to as so-called uberization of work). Once again, I return to the Paris Congress in 2006, at which (in the mentioned report) was told, I quote: "Employers introduce new technologies without adequate adjustment measures for affected workers. New forms of work organization benefit firms, but put workers into new forms of precariousness."³ In the following year, in January 2007, the first iPhone was placed on the market. Also thanks to the massive expansion of smartphones, there has been an unprecedented development of technical solutions that make easier, but also gradually "control", our everyday lives and they also have a significant impact on labour market changes. There are changes in forms of work, ways of mediation of work, many jobs are disappearing. If this happens because of the replacement of human work by automatization and technological progress, it is not something that has not been here in the past. However, it is worrying if jobs are "disappearing" only seemingly, to be replaced by work of often tens of thousands of the so-called independent contractors for a single "customer". These factual employers then refuse to obey even basic obligations which the ordinary employer has to his employees, by referring to the fact that they are only a "technological platform." In the field of taxation and social security financing, the relevant payments are not paid for these employees, and these employees (and their factual employers) then become free-riders of the social security systems. Both the European and national political elites shuffle around and

³ Ibid.

after a period when they want to regulate almost everything, now (surely even due to the "Brexit" shock), they send out unclear messages as "we cannot hinder progress" – investors of these platforms will surely appreciate it if the unclear situation remains as long as possible. In this respect, we are all obviously with interest waiting for one appeals procedure to be commenced in London at the end of this month (Aslam, Farar and Others versus UBER).

Final remark - to the current topic on the background of historical experience

One of the important topics of our congress will be the issue of social integration of immigrants. It is worth mentioning in this context that the Czech Republic has recently been the target of growing criticism for non-fulfilment of relocation quotas in accepting refugees from other union countries. There are calls for sanctions, even for a legal action against our country, which is depicted in some commentaries, as a black passenger of the European Union and what is worse as a country of intolerant xenophobes.

Allow me to, for sake of the country's patriotic defence, mention the mitigating circumstances which I see, among other things, in the fact that in its history it was often the target and transit country for migrants from several states and it did not close the door before them. Before World War Two, it was mainly emigration from Bolshevik Russia, more precisely, the Soviet Union, later also from Nazi Germany and occupied Austria.

But the inhabitants of Czechoslovakia themselves became immediately afterwards migrants in their own country, afterwards when in 1938, the Munich Agreement was negotiated, Czechoslovakia was forced to give Germany its border territories with more than 150,000 Czech refugees expelled from the territory to the rest of the remaining country.

If we move into the post-war period, then despite the deficit of democracy, which was typical for Czechoslovakia's brand of socialism, which forced many of our citizens to emigrate to democratic countries, we can also in the years 1948 to 1989, identify relatively strong immigration flows directed to the former Czechoslovakia, for example, as a result of the Greek civil war in the 1950s, or later of the war-damaged Vietnam.

After the democratization of the regime in our country in 1989, that is after the so-called velvet revolution, and after the split of Czechoslovakia in 1993, to the separate Czech and Slovak Republics, immigration flows to the Czech Republic have not ceased.

At that time, the Czech Republic became the target country of thousands of immigrants from the countries of war-torn Yugoslavia, as well as thousands of economic immigrants from Ukraine. It is also worth mentioning that Vietnamese immigrants from neighbouring countries, even from united Germany (from its eastern part) were moving to the Czech Republic at that time – I guess, it is not so bad with our xenophobia.

The Czech Republic was not yet a member of the Union and managed these migratory waves without "help" from other countries. Many of these immigrants have found a permanent home here, still live here and work or do business, many with such diligence and success that they can often be an example for the majority of our society.

A common feature for these immigrants is that they have chosen the Czech Republic themselves as the target country in which they want to live and work; this distinguishes them from the current wave of emigrants from Africa and the Middle East, which primarily aim at landing in other

countries, especially in larger economies offering wider opportunities for employment in global context, into richer countries which are naturally capable of more generosity in the field of social benefits, or they are for example aiming at countries which are closer to them for linguistic reasons, for example, into the countries of their former colonial metropolises. I'm afraid that in fact, in a forced relocation to our small country, they would probably not perceive as fulfilling their dream about a free life of their choice.

I would therefore like to conclude this closing remark by saying that if we also in the recent past have opened our doors to the abovementioned number of immigrants without requiring any participation in the solution from the other countries and that, for example, Czech state provision of European border police is not lacking, this should, in my humble opinion, be taken into account when deducing the consequences of non-fulfilment of (as is turning out, all-European non-functioning) relocation quotas by the Czech Republic. I believe that the approach of the institutions of the European Union should be prudent in both requirements and threats of sanctions that can ultimately seriously damage relations between Member States and influence the attitudes of many inhabitants of the Member States in their perception of the European Union.

Ladies and gentlemen,

Let me wish you a pleasant stay in the Czech Republic and to all of us an inspiring congress.

Thank you for your attention!