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Michal Smejkal
Masaryk University, Brno, Czech Republic
ORCID 0000-0002-1136-8607
Michal.Smejkal@law.muni.cz

Jan Horecký
Masaryk University, Brno, Czech Republic
ORCID 0000-0001-8933-6624
Jan.Horecky@law.muni.cz

Specifics of business trips (official journeys) under Czech legislation

Keywords: Business trip, employment, public service employment autonomy of will, protective function of labour law

Summary. In the submitted article, the authors deal with the Czech legal regulation of business trips (official journeys). The authors focus on the legal regulation of business trips of employees whose employment relationships are governed by the Czech Labour Code, as well as on official journeys of persons in a civil service employment, such as civil servants, members of the security forces and professional soldiers. In the article, in addition to the conditions under which these persons may be instructed to go on a business trip, the authors also examine the xtent to which the protective function of labour law affects various categories of persons.

Specyfika podróży służbowych w ustawodawstwie czeskim

Słowa kluczowe: podróż służbowa, zatrudnienie, zatrudnienie w służbie publicznej, autonomia woli, funkcja ochronna prawa pracy

Streszczenie. W niniejszym artykule autorzy zajmują się czeską regulacją prawną podróży służbowych. Autorzy koncentrują się na prawnej regulacji podróży służbowych pracowników, których stosunki pracy reguluje czeski kodeks pracy, a także na podróżach służbowych osób zatrudnionych w służbie cywilnej, takich jak urzędnicy, członkowie służb bezpieczeństwa i żołnierze zawodowi. W artykule, oprócz warunków, na jakich można skierować te osoby w podróż służbową, autorzy badają również, w jakim stopniu funkcja ochronna prawa pracy dotyczy różnych kategorii osób.

Introduction

The performance of dependent work usually takes place within certain boundaries that are set in matter, place and time. These boundaries are set by the parties to the employment contract as a part of such contract by agreeing on the type of work and its breadth (material limitation), the place or places of work performance (local or territorial limitation) and finally the date of commencement of employment (time limitation). Outside these limits, the employer can only use the employee's

workforce to a limited extent. The aim of this article is to analyze aforesaid limits as well as the specifics of business trips carried out in the regime of the Labour Code. At the same time, business trips held in the regime of other Czech legal regulations will not be left out of interest.

1. Business trip

In certain cases, the employer may have the employee's workforce available even outside the limits set by the provisions in the employment contract containing its essential requirements. In particular, an agreement may be reached to change the content of the work commitment, and this bilateral legal action may be used by the parties to define the type of work or place(s) of work performance. Except for this case, when both parties show their will to change the content of the agreed obligation, the employee must perform work of a different type or in a different place than agreed in the employment contract, only in the cases specified in the Labour Code[1].

In practice, it is quite common for an employer to need an employee to perform work tasks in a diffrent place from where he normally performs his work. If the employer needs the employee to perform such tasks in a place other than the one agreed in the employment contract, the employee must be instructed to go on a business trip.

The business trip represents one of the standardized main changes in the employment relationship foreseen by the Labour Code. Based on Section 38 (2) of the Labour Code can be concluded that it is of no importance whether the employment relationship is established by an employment contract or appointment. Provisions regulating business trips shall apply also in the case of employees who work for the employer based on one of the agreements on work outside the employment relationship (provision of Section 77 (2) of the Labour Code *a contrario*).

By instructing the employee to go on a business trip, the content of the particular contractual obligation changes, specifically in the agreement on the place of work. The mentioned fact can be understood as the first defining feature of the business trip. The other two can be considered its limitation in time (necessary period of time) and the agreement between the parties, i.e. employer and the employee.

[1] See Section 40 (2) of the Act No. 262/2006 Coll., Labour Code, as amended (here and after referred to as the "Labour Code").

2. Travel outside the place agreed in the employment contract and reimbursement of travel expenses

A business trip is to be seen as a limited period of time for which the employer instructs his employee to work away from his agreed place of work performance[2]. Thus, by instructing the employee to go on a business trip, the employer expands the scope of his dispositional authority and at the same time the employee's obligation to fulfill work orders and work tasks even outside the agreed place of work performance which was agreed between the parties in the employment contract[3]. The business trip is thus tied exclusively to the agreed place of work performance, in other words there can be no business trip within the agreed place of work performance. As mentioned above, place of work performance can be arranged relatively narrowly (e. g. a specific address) or relatively broadly (e. g. the territory of a region, several regions or, for example, the territory of the entire Czech Republic). **The width of the agreed place of work performance thus determines the width of the territorial scope of the employer's dispositional authority**[4].

During a business trip, employees incur expenses (for accommodation, fares, etc.) that they would not incur had they not been instructed to go on a business trip. The employer is obliged to reimburse these expenses to the employee (provide him with **reimbursement of travel expenses** or so-called "travel allowances"[5]), as it is inadmissible for the employee to bear the costs associated with a business trip because dependent work must be performed at the employer's expense[6].

Reimbursement of travel expenses is then determined **by the duration of the business trip**, i. e. the time period from the moment determined for the start of the business trip to the moment which is determined as the end of the business trip. For the purposes of reimbursement of travel expenses, it is irrelevant ratio between the amount of time that the employee spends working during the business trip and the amount of time the employee spends resting. However, reimbursement of travel expenses is not only provided for business trips, but also if the employee

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[2] See Section 42 (1) of the Labour Code.

[3] J. Horecký, *Vysílání zaměstnanců na pracovní cesty*, https://www.skolaprofi.cz/33/vysilani-zamestnancu-na-pracovni-cesty-uniqueidmRRWSbk196FNf8-jVUh4EjE7bmw5ZmxK9PnVe3CP2772ZspOsA8wwA/ [access: 20.03.2020].

[4] See J. Horecký, *Dispoziční pravomoc zaměstnavatele*. 1. Ed.,Wolters Kluwer ČR, Praha 2018, p. 49-53.

[5] See Section 152 et seq. of the Labour Code.

[6] See Section 2 (2) of the Labour Code.

is instructed to travel outside the regular workplace[7] and in other cases provided for in Section 155 of the Labour Code.

The legal regulation of reimbursement of travel expenses does not apply to employees who are active on the basis of one of the agreements on work performed outside the employment relationship [provisions of Section 77 (2) (i) of the Labour Code]. However, the mention fact does not mean that reimbursement of travel expenses can never be provided to these employees. The parties to such legal relationship established by one of the agreements on work performed outside the employment relationship can agree on the employee's right to reimbursement of travel expenses. However, the legislation[8] provides that reimbursement of travel expenses to an employee who performs work on the basis of an agreement on work performed outside an employment relationship may only be granted where this right and the regular workplace have been agreed[9].

3. Limitation in time (necessary period of time)

The period of time for which the employer can instruct the employee to go on a business trip is limited to **the necessary period of time**. Behind this vague legal concept can be hidden periods of time of various lengths, i. e. from a few minutes to several months. It always depends on the time and material demands of the work task that the employee has to fulfill at the place of posting.

Thus, it can be stated that a business trip is conceptually **a short-term change in the content of the employment relationship**, because after the end of the necessary need (i. e. after the job task for which the employee was sent on a business trip has been completed) the business trip ends[10]. To ensure the longer-term need to perform work outside the agreed place of work there is another legal institute, which is the institute of transfer to another place (relocation)[11].

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[7] Where a regular workplace has not been agreed in the employment contract for the purposes of reimbursement of travel expenses, the place of performance of work agreed in the employment contract shall be regarded as a regular workplace. Where the place of performance has been agreed more widely than by reference to one municipality, the municipality in which the employee's business trip mostly start shall be considered as the employee's regular workplace. For the purposes of reimbursement of travel expenses, the regular workplace may not be agreed more widely than by reference to one municipality (see Section 34a of the Labour Code).

[8] Provision of Section 155 (1) of the Labour Code.

[9] Where under an agreement to complete a job, the employee is to fulfill a working task in a locality (town, village) which is different from that where he has home address, this employee shall have the right to reimbursement of travel expenses provided that such reimbursement has been agreed, and this shall apply even if otherwise a regular workplace has not been agreed.

[10] In a place designated by the employer.

[11] See Section 43 of the Labour Code.

4. Agreement between employer and employee

The employee can never instruct him or herself to go on a business trip, as this is the sovereign right of the employer and can be seen as manifestation of the organizational function of labour law. It is up to the employer to manage and organize the work process and to decide when it is necessary for the employee to perform work (or tasks) outside the agreed place(s) of work performance. The employee who is on a business trip performs his work according to instructions given by the manager who has instructed him to go on the business trip.

However, the employer must also take into account the second function of labour law, namely the protective function, which is reflected in the legal rule that the employer may instruct the employee to go on a business trip only on the basis of a **mutual agreement**, in other words with the employee's consent.

For the agreement of the parties (for the hereinbefore mentioned consent) **there is no prescribed form**, i.e. the parties can choose the form of this legal action which corresponds to the Section 559 of the Civil Code[12] which provides that everyone can choose any form for legal action[13] if they are not limited in choice of form by agreement or law (which is not the case here).

The agreement between the parties can thus be written, oral or even tacit (the employee "submits" and executes the business trip without protesting). Should the parties stipulate the written form of this agreement, its content could be changed by legal action done in another form unless the agreement of the parties precluded it[14].

An agreement on the possibility of instructing an employee to go on a business trip may be part of an employment contract (or may be part of another agreement) and may cover an unlimited number of future business trips (so-called "general consent"). In such a case, the employee has undertaken to perform these trips and a change *pro futuro* is possible only in the case of a change in such an arrangement which requires the consent of both parties. Therefore, if the employee has provided the employer with such general consent, he can no longer refuse to go on a business trip (if so instructed by the employer), as by concluding an agreement on the possibility of being sent on business trips the employee has extended the employer's dispositional power and the employer's instruction for the employee to go on

[12] Act No. 89/2012 Coll., Civil Code, as amended (hereinafter referred to as the "Civil Code").

[13] There can be no doubt that this is a legal action, as it has legal consequences, which are expressed in it, as well as legal consequences resulting from the law, good morals, customs and established practice of the parties.

[14] See Section 564 of the Civil Code.

a business trip has to be seen as a binding instruction which has to be carried out by the employee regardless of his expert opinion on it[15].

Even in a situation where the above-described agreement exists between the parties, it is not possible to instruct an employee specified in the provision of Section 240 of the Labor Code to go on a business trip. The groups of employees protected by the said provision are as follow:

- pregnant employees,
- female employees and male employees taking care of children of up to the age of eight years,
- single[16] female employee or a single male employee taking care of a child until the child reaches the age of 15 years,
- employee who proves that he or she, mostly on his or her own, takes long-term care of a person who is considered as a person being dependent on another individual's assistance and this dependency is classified by grade II (dependency of medium seriousness), grade III (serious dependency) or grade IV (full dependency).

The said provision has an even greater effect on the protective function of labour law, as these are groups of employees that can be seen as those playing a certain social role and being more socially vulnerable. After all, this regulation is also a reflection of the protection of these groups at the constitutional level[17].

In the case of groups of employees referred to in Section 240 of the Labour Code, the legislation therefore requires the employer to agree with them on each specific business trip. The form for this special agreement (employee's consent) is not prescribed. The employee concerned may thus agree in writing, orally or tacitly.

If there is an agreement between the employee to whom the regulation of Section 240 of the Labour Code applies and the employer on the possibility of sending this employee on business trips (in other words the employee gave the employer "general consent" to his posting on business trips), at the moment of fulfilling the hypotheses of the norms stated in the provision of § 240 of the Labour Code, this obligation ("general consent") is suspended and the employer cannot use it. As soon as the situation referred to in the said provision ceases to exist, the

[15] See Judgment of the Supreme Court of 18 March 2014, file no. 21 Cdo 1271/2013, or Judgment of the Supreme Court of 2 September 2015, file no. 21 Cdo 3840/2014.

[16] "Single persons" shall mean unmarried, widowed or divorced women, single, widowed or divorced men, and also women and men who are single for other serious reasons provided that they do not live with a common-law husband or wife or with a same-sex partner [see Section 350 (1) of the Labour Code].

[17] See in particular Articles 29 and 31 of the Czech Charter of Fundamental Rights and Freedoms.

obligation is automatically renewed ("general consent") and the employer can use this contractual arrangement again.

For example, if a female employee, a mom of a 10-year-old child, divorces, the legal force of a divorce judgment in her case activates her protection guaranteed by the provision of Section 240 of the Labour Code. This protection will last until her child reaches the age of 15, starts living with a new partner, or until the day of a new marriage.

5. Distribution of working hours

The business trip usually carries with it the need for a different schedule of working hours. The employer must consider that the business trip consists of several time periods. The employee either

- performs work during working hours (the employee has scheduled working hours and performs work), or
- does not perform work during working hours as another fact prevents him from doing so (e. g. the employee travels to the destination at this time) and thus an obstacle to work on the part of the employer in the sense of Section 210 of the Labor Code is constituted[18], or
- the employee rests (rest period means any period outside working hours).

In general, working hours are scheduled by the employer and may be changed only by the employer as well[19]. However, even if the employee is instructed to go on a business trip, the employer must not forget the rule contained in the provision of Section 84 of the Labour Code, namely the employer shall draw up a written weekly work schedule and inform his employee of the schedule or its alteration latest two weeks before the beginning of the period over which the working hours are distributed and where it concerns a working hours account, the employer should inform his employee of the schedule latest one week before the period concerned unless the employer and the employee have agreed on another time-limit with regard to providing this information.

Therefore, if the parties do not agree on another time-limit with regard to providing this information about the change of working hours, the employer must inform the employee of the working hours at least two weeks (one week where

[18] Under the mentioned obstacle, the employee's wage or salary is not reduced, but if the employee has lost his or her wage or salary as a result of the method of remuneration, he or she is entitled to compensation for the wage or salary equal to the average earnings.

[19] Unless the schedule of working hours is embodied in bilateral legal action, such as an employment contract.

working hours accounts are used) in advance and in writing. Alternation of the employee's schedule due to a business trip constitutes no exception to the said rule.

6. Adolescent employees[20]

The Czech legal regulation does not contain any different rules in relation to instructions of adolescent employees to go on business trips (they do not fall "under the protection" of the provision of Section 240 of the Labour Code, as mentioned above). Children and adolescents are considered specific risk groups under European Union law[21] and measures must be taken with regard to their safety and health[22]. It is therefore logical that even on a business trip, the employer is obliged to observe the special rules that the legislation imposes on performance of dependent work by adolescents (juveniles). These rules aim mainly at protecting adolescent employees as their position in the labour market tends to be more vulnerable position.[23]

The employer must therefore pay particular attention to ensuring that his adolescent employees on a business trip

- perform only work that is appropriate to their physical and mental development,
- do not work overtime (this is forbidden to adolescents under Czech law),
- do not carry out night work, or adolescent employees who are over 16 years of age may exceptionally carry out night work not exceeding one hour where this is necessary for their vocational training and such night work is done under the supervision of an employee who is over 18 years of age if this supervision is necessary for the sake of the adolescent employee concerned,
- do not perform work on individual days for more than 8 hours,
- perform work in all basic labour relationships in the sum of a maximum of 40 hours per week,
- have a continuous rest between shifts of at least 12 hours,
- have a continuous rest of at least 48 hours a week.

The above mentioned rules are in accordance with **Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work**. It can even be

[20] "Adolescent employees" (or "juvenile employees") shall mean employees under 18 years of age [see Section 350 (2) of the Labour Code].

[21] See preamble Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work.

[22] See Article 15 of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.

[23] The right of minors to special protection in employment and to assistance in preparing for a profession is guaranteed in Article 29 (1) of the Charter of Fundamental Rights and Freedoms.

stated that the Czech legislation provides adolescent employees with an even greater level of protection than required by the said directive, as it does not allow employers to reduce adolescent workers' rest periods per week to less than 48 hours, although the directive allows for technical or organizational reasons to reduce the minimum rest for up to 36 consecutive hours[24].

7. Civil service employments

The above-examined regulation of the business trip is contained in the Labour Code and applies to the business trips of all employees who are affected by this regulation directly (e. g. salesmen, workers, managers, etc.) or in the alternative, i. e. on the principle of subsidiarity (e. g. local government officials, teachers, academics, prosecutors, etc). However, there are also groups of employees who are not affected by the regulation of business trips contained in the Labour Code, as their employment relationships are governed by a special legal norm. This category includes different types of civil service employment namely service employment of (1) public servants, (2) members of security forces, and (3) professional soldiers (therefore in the headline collectively referred to as "civil service employments"), which are often perceived as free-standing specific legal relationships in the performance of dependent work, which are comprehensively regulated by special legislation.[25]

Firstly, official journeys[26] of **civil servants** whose civil service employment relationships are governed by Civil Service Act[27]. In the mentioned act official journey is listed as one type of changes in the civil service employment[28]. The mentioned list of changes in the civil service employment is exhaustive and cannot be extended even through the autonomy of the will of the parties. This is a manifestation of the public law method of regulating public service employment.

It also applies to official journeys[29] of civil servants that the instruction is given by the employer, respectively by the relevant superior (senior public servant). A civil servant travelling on an official journey executes the service upon orders of the senior public servant who requested the official journey. When a civil serv-

[24] See Article 10 (2) of Council Directive 94/33 / EC of 22 June 1994 on the protection of young people at work.

[25] J. Horecký, P. Machálek, *Právní poměry při výkonu závislé práce ve veřejné správě*, 1. Ed., Masarykova univerzita, Právnická fakulta, Brno 2017, p. 24.

[26] The first difference lies in the designation of such trip. Hereinafter we will refer to such trip as "official journey".

[27] Act No. 234/2014 Coll., On Civil Service, as amended (here and after referred to as the "Civil Service Act"). The Labour Code applies to the employment of civil servants on the principle of delegation.

[28] See Section 44 of the Civil Service Act.

[29] See Sections 45 and 46 of the Civil Service Act.

ant is instructed to go on an official journey, the place of departure, the place of destination and the place of termination of the business trip, the duration and the mode of transport and accommodation shall be determined; other business travel conditions may also be specified.

However, an essential difference compared to the regulation contained in the Labour Code is that a civil servant can be sent on an official journey even **without his consent**. This legal regulation corresponds to the concept of the supreme perception of the service body and the power decision of the service body towards a civil servant. A civil servant may lodge a complaint with the service authority against an instruction to go on an official journey, but this does not release him from the obligation to comply with the instruction on and carry out the official journey, even if the competent body has not decided on his complaint by the time the official journey begins. If he did not set out on the official journey or if he did not carry it out, his action may result in a disciplinary offense, which could lead to the initiation of disciplinary proceedings against a civil servant.

This rule does not apply to a pregnant civil servant and a male or female civil servant caring for a child under the age of 8, single male or female public servant caring for a child under the of 15 and also to a public servant who proves to be to the prime provider of long-term care for a person who is considered (pursuant to another law) is considered as a person being dependent on another individual's assistance and this dependency is classified by grade II (dependency of medium seriousness), grade III (serious dependency) or grade IV (full dependency)[30]. The legislation stipulate that these civil servants give their prior consent to being sent on the official journey. It can be noted that this group of civil servants to whom a higher standard of protection applies is the same group of persons as mentioned in Section 240 of the Labour Code, and even here the protective function of labour law is increasingly manifested.

The Civil Service Act stipulates *expressis verbis*[31] that when sent on an official journey, the health and personal condition of the civil servant and his family circumstances must be taken in consideration. This may at first sight appear to be a rule absent from the Labour Code. However, this is not the case, as under the Labour Code the employee can decide within the autonomy of will whether to agree to being sent on business trips or not. Likewise, the abovementioned rule can

[30] See Section 45 (3) of the Civil Service Act.
[31] See Section 45 (2) of the Civil Service Act.

be deduced without major difficulties from other provisions of the Labour Code, such as Section 81 (2) [32] or Section § 241 (1)[33].

Another group of official journeys are those of **members of the security forces**, with the security forces being the Police of the Czech Republic, the Fire and Rescue Service of the Czech Republic, the Customs Administration of the Czech Republic, the Prison Service of the Czech Republic, the General Inspectorate of Security Forces, the Security Information Service and the Office for Foreign Relations and Information (hereinafter referred to as "members of security forces" or "members"). The employment of members of security forces is governed mainly by the Act on the Employment of Members of the Security Forces[34], which in its Section 37 stipulates that a member of security forces may be sent on an official journey to perform the duties arising from his or her position to a place other than the place of service, which in the territory of the Czech Republic and determined by the territory of the municipality in which the member performs the service.

The Act on the Employment of Members of the Security Forces **does not require the consent** of the member of the security forces that is being sent on an official journey. Exceptions are provided only for pregnant members, members up to the end of the ninth month after childbirth, breastfeeding members, members and carers of a child under one year of age, or single male and female members caring for a child under 3 years of age. These members of the security forces may be sent on an official journey only with their prior consent[35]. It can be observed that the law contains only the necessary restrictions on members (in order to maintain the equal status of men and women in employment, some restrictions also apply to male members) in the performance of service, especially in cases of pregnancy and maternity, partly also in childcare[36], and that the group of members covered by the enhanced protection in the form of the need for their consent to be sent on each individual official journey is narrower than the group of similarly protected employees under the Labour Code or Civil Service Act.

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[32] In distributing working hours *(even on a business trip)*, the employer shall see to it that the distribution is not contrary to safe work and does not pose risks to health.

[33] In assigning employees to shifts, the employer shall also take into consideration the needs of female employees and male employees taking care of children. In our opinion, this rule must be interpreted extensively in the sense that the employer is obliged to take abovementioned fact into account when sending an employee on a business trip.

[34] Act No. 361/2003 Coll., On the employment of members of the security forces, as amended (hereinafter referred to as the "Act on the Employment of Members of the Security Forces"). The Labour Code applies to the employment of the employment of members of the security forces on the principle of delegation.

[35] See Section 85 of the Act on the Employment of Members of the Security Forces.

[36] Explanatory memorandum to the Act on the Employment of Members of the Security Forces, [in:] *ASPI* [legal information system], Wolters Kluwer ČR [access: 10.07.2020].

Finally, it is necessary to mention official journey carried out of **professional soldiers** (hereinafter also referred to as "soldiers"), whose service conditions are governed primarily by the Act on Professional Soldiers[37]. An official journey is a change of service employment, which is defined as short-termed and is limited to a necessary period of time. The rules enacted in the Act on Professional Soldiers do not require a soldier's to consent to the official journey. The law provides increased protection only for pregnant soldiers caring for a child under the age of 8, who can be sent on an official journey outside the basic period of service only with their consent, as Article 32 of the Czech Charter of Fundamental Rights and Freedoms stipulates that a pregnant woman is guaranteed special care, protection in employment and appropriate conditions. Increased protection in the form of this consent is limited to a minimum number of female soldiers, so that it does not constitute an obstacle to the recruitment of female soldiers for service and thus creates, as far as possible, equal conditions for soldiers of both sexes[38].

Summary

In the presented article we, using mainly the methods of critical analysis and horizontal comparison, introduced the most important rules under Czech legal regulation of business trips and official journeys. Employees whose employment is regulated by Czech Labour Code can be instructed to go on a business trip only if they express their consent to it. In this case, the autonomy of the will is applied relatively broadly, as it is entirely up to the employee whether he wants to perform work outside the agreed place of work. The protective function of labour law is fully reflected in the special categories of employees who play a certain social role and their sending on a business trip could limit the performance of this role. As for official journeys of persons who perform dependent work in a civil service employment relationship, the superior position of the employer (e. g. the state) and the nature of the work performed are clearly manifested. The nature of the work performed can be understood as a service for the benefit of society, and for this reason the scope for the exercise of autonomy of will narrows for the person working in the service. At the same time the protective function of labour law gives way to the organizational function and to the interest in the running of society.

[37] Act No. 221/1999 Coll., On Professional Soldiers, as amended (hereinafter referred to as the "Professional Soldiers Act"). The Labor Code applies to the employment of professional soldiers on the principle of delegation.

[38] Explanatory memorandum to the Act on Professional Soldiers, [in:] *ASPI* [legal information system]. Wolters Kluwer ČR [access:10.07.2020].

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