Inovatívne formy vzdelávania v transformujúcom sa univerzitnom vzdelávaní

Miloš Lacko, Andrea Olšovská

SLOVAK LABOUR LAW AND SOCIAL SECURITY LAW

Európska únia
Európsky sociálny fond

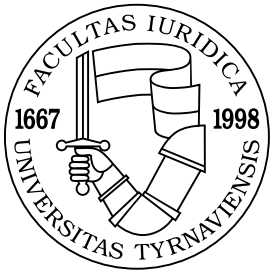
FACULTAS IURIDICA 1667 1998 UNIVERSITAS TYRNAVIENSIS

Operačný program VZDELÁVANIE

Operačný program: Vzdelávanie • Programové obdobie: 2007-2013 • Názov inštitúcie: Trnavská univerzita v Trnave, Právnická fakulta • Názov projektu: Inovatívne formy vzdelávania v transformujúcom sa univerzitnom vzdelávaní • ITMS projektu: 26110230028

Miloš Lacko, Andrea Olšovská

Slovak Labour Law and Social Security Law



Slovak Labour Law and Social Security Law

Authors:
© Doc. JUDr. Miloš Lacko, PhD.: *Social security law*
© Doc. JUDr. Mgr. Andrea Olšovská, PhD.: *Labour law*

Reviewers:
Doc. JUDr. Miriam Laclavíková, PhD., JUDr. Peter Varga, PhD.

Published by:

ISBN: 978-80-8082-721-2

Content

II. Labour law

Preface

This learning material provides theoretical and legal basis for the knowledge of the social security system and basic institutes of employment relations in the Slovak Republic. Special attention is paid to the insurance system that ensures the greatest possible social status of economically active persons, also to the state social support as normative tool of implementation of the state family policy, and also to resolving the state of material deprivation. Then there follows history of labour law and in particular, there is presented interpretation of the creation, change and termination of employment, working hours, remuneration and there is marginally paid attention also to obstacles in work, social policy of the employer, liability, legal protection and collective labour law.

The present textbook does not cover comprehensively all aspects of the legal institutes nor all aspects of social security law and labour law, but neither it is the ambition of its authors, as for the study of these two sectors of law there is needed in addition to present textbook also to use the corresponding legal regulations which are subject to frequent legislative changes. The authors elaborated the textbook so as to become a recommended literature within foreign language study programmes containing subjects as social security law and labour law of the Slovak Republic and for all who are interested in obtaining knowledge of the mentioned subjects on a broader basis. The ambition of the present textbook is to achieve the basis for the student, who then should be able to state professional opinions and proposals of solutions for essential social security and labour institutes.

The provided knowledge of the social security system reflects the legal situation from November 2012 and knowledge of labour law is based on the legislation effective to 1st January 2013.

Trnava 7. 1. 2013

The authors

I. Social security law

1. SOCIAL SECURITY SYSTEM AND ITS FUNCTIONS

Social security is a basic component of social policy, which is a product of several instruments and measures under specific policies (e.g. housing, education, family, and healthcare policies). The relationship between social policy and the above-mentioned specific policies is typically presented as a relationship between the general and the specific, even though there are efforts to single them out and separate them from social policy.

From the many definitions, let's choose the one that perceives **social policy** as a set of activities (or measures) purposefully targeted at the development of individuals and their way of life, improvement of the population's living conditions and safeguarding their social sovereignty and security within the confines of the country's political and economic possibilities[1].

Social security and its systemic structure serve the realisation of the basic role of social policy as expressed in the definition – to provide social security (values) to every individual as deemed appropriate by the society at the given stage of its development. The existence and preservation of social security is the subject and an underlying theme of the whole systemic structure of the social security system. Subsequently, social security, taking into account the diversity of scientific definitions, means **all society-wide and individual activities of entities aimed at preserving rights, maintaining and improving the social standard (status) of individuals (or groups of persons) in all spheres of life of the society. The activities of these institutions are carried out in the social area by means of concerted and functionalistic schemes and mechanisms, as well as by means of isolated, random and pilot activities and schemes.**

Social security and its minimum scope, as expressed by means of subjective rights, is defined in international treaties and Slovak national law (the Constitution and legal regulations concerned with maintaining or improving social security). The most general social right is the individual's right to social security. At the regulatory level, social security is articulated by social security law. Taking into account the many definitions of **social security law**, we can **describe it** as a set of legal regulations governing the provision of material security (benefits, services and other social measures) for individuals, who, due to the occurrence of a social contingency, are unable to obtain the necessary means of living (especially by work) or exercise their human rights guaranteed by the Constitution. The basis of the regulatory framework for social security is the organisation and principles of the functioning of mechanisms and social relations **arising in the provision of material security (in other words, in the redistribution of**

[1] Stanek, V. et al.: Sociálna politika [Social Policy]. 2nd edition, Sprint - vfra, Bratislava 2006. ISBN 80-89085-66-0.

social welfare) to socially dependent individuals (whose income level, standard of living or health has declined due to a social contingency). In addition to socially dependent individuals participating in the above mechanisms, the entities involved in the social security system include social institutions administrating the above mechanisms and relations, such as state administration authorities, public authorities or non-state institutions whose status and authority (rights and obligations) are regulated by law.

Along with the term 'social security law', scientific literature also recognises the **term 'social rights'**. These terms are often used interchangeably, which is a simplification, however. The term 'social rights' is more general and universal and is associated with terms such as 'social security' and 'social justice' as interpreted in Western European social security science. From the definition of social security law, we should move on to briefly defining the functions (roles) of social security law applicable, in particular, to persons exercising their social rights.

Social security law fulfils the following **functions**:

- protective – based on the approach to addressing social contingencies
- economic – financial compensation
- regulatory – resulting from the regulatory (legal) representation of the organisation of the social security system
- stimulating – promotes the efforts of individuals to take responsibility for their social situation
- social and psychological – generates the feeling of social and legal security that, should social contingencies occur, social measures will be employed to mitigate their consequences.[2]

[2] Pp. 42-43, Macková, Z. et al.: Základy práva sociálneho zabezpečenia [The Basics of Social Security Law]. Prosperity, s. r. o.. Bratislava 2001. 300 pgs. ISBN 80-968219-3-8.

2. SOURCES OF SOCIAL SECURITY LAW

Source of law is a summary term for forms of law, ie forms in which law is contained as set of rules of human conduct established by the State. These forms are designated for specific range of subjects. Compliance of rules in forms of law can be claimed.[3] For a source of law in the formal sense, are the following:

1. normative legal acts (the outcome of the state's lawmaking activities; their are a national rules varying degrees of legal force as the Constitution of Slovak Republic and constitutional acts, laws[4] and law implementing regulations especially regulation of central government (Regulation of Government of the Slovak Republic, ministerial decree a measures) and local notice). Special status have the legal acts of the European Union.
2. normative agreements (an expression of consent of two or more parties) regulating social relations of the same type and indeterminate quantity. There are generally binding rules of conduct in the field of international law in the form of: an international treaty, which takes precedence over laws and an international treaty ratified in the manner prescribed by law. In social security law are particularly relevant multilateral conventions of international organizations (ILO, Council of Europe[5]) and bilateral agreements on social security (Agreement between the Slovak Republic and Australia on Social Security, between the Slovak Republic and Canada, between the Slovak Republic and Bulgaria, between the Slovak Republic and the Czech Republic));
3. judicial and administrative precedents
4. legal tradition.

The formal sources of Slovak social security law are only normative legal acts and normative agreements. Individual legal acts: administrative regulations and individual decisions of social security authorities, which are typical for social security law because of the frequency, are not considered to be a source of law in the Slovak republic.

The main normative legal acts of Slovak social security system, which is divided into three parts (social insurance, social support system and social assistance system) are:

- the Constitution of the Slovak Republic (published under No. 460/1992 Coll.), in particular Section 5 of Title II of the Constitution entitled "Economic, Social

[3] More: Prusák, J.: Teória práva. 1. vyd. VO PF UK, Bratislava 1995. s. 308. ISBN 80-7160-080-6. s. 188 et seq.

[4] The special status have judgment of the Constitutional Court, which can suspend efficiency of rule of law or even cancel them under certain conditions.

[5] The most important are Revised European Social Charter (published as no. 273/2009 Coll.) and ILO Convention concerning Minimum Standards of Social Security (published as no. 461/1992 Coll.)

and Cultural Rights",
- Social Insurance Act No. 461/2003 Coll.,
- Health Insurance Act No. 580/2004 Coll.,
- Act No. 581/2004 Coll. on Health Insurance Companies and Healthcare Surveillance,
- Act No. 576/2004 Coll. on Healthcare and Healthcare-Related Services,
- Old-Age Pension Savings Act No. 43/2004 Coll.,
- Supplementary Pension Savings Act No. 650/2004 Coll.,
- Employment Services Act No. 5/2004 Coll.,
- Act No. 447/2008 Coll. on Financial Allowances to Compensate for Severe Disabilities,
- Social Services Act No. 448/2008 Coll.,
- Act No. 599/2003 Coll. on Assistance in Material Hardship,
- Act No. 601/2003 Coll. on Living Wage and

several legal regulations governing the specific aspects of state social support (for more detail, see in chapter 6.5).

3. LEGAL SOCIAL SECURITY RELATIONSHIP

Social security system and various types of relations (particularly system-control, administrative, executive, contributory, benefit) implemented in it are regulated by law which outcome is legal social security relationship. The gist and purpose of legal social security relationship is not a regulation of every relation taking place in the area of the social security. Only relations that interfere and influence the social position of an individual are normatively regulated in this area thereby determining the need of the legislator regulation.

In the term of conception, the legal social security relationship can be defined as a legally regulated group of social relationships between participants as bearers of the individual rights and the legal obligations set by the legal norms of social security, which arise, change and disappear as a result of legal fact. The science of social security system sometimes describes the legal social security relationship as social-security legal relationship.

The main purpose of the legal social security relationship (social-security legal relationship) is substantive security through the provision of benefits and services for secured persons in case of certain life social events.[6] The given purpose determines also the gist of legal norms in the area of social security referred as the social security system. We understand the social security system as all the legal norms governing the behaviour of individuals in social relations that arise in the provision of substantive security or other assistance to natural persons, who due to legally accepted social events need this compliance or assistance.[7]

Social-security legal relationships are distinguished by the extensive differentiation. We can divide the social-security legal relationships mainly into the basic (primary) and derived (secondary) social-security legal relationships.

Basic social-security legal relationships are those that establish the basic rights and responsibilities of participants in these relationships (e.g. determines the conditions under which the insured person has to perform contribution obligations or define the conditions under which the claimant shall be provided by benefit. Basic social-security legal relationships are created by these relations:

- public health insurance
- social insurance (social insurance, pension insurance, invalid insurance, injury insurance, guarantee insurance and unemployment insurance)
- state social assistance

[6] Macková, Z. a kol.: Základy práva sociálneho zabezpečenia. Bratislava : Prosperity, 2001. 300 s. ISBN 80-968219-3-8. s. 45.

[7] Macková, Z.: Právo sociálneho zabezpečenia : Všeobecná časť. 1. vydanie. Šamorín: Heuréka, 2009. 162 s. ISBN 978-80-89122-53-0. s. 90.

- social assistance.

Derived social-security legal relationships are those that arose on the basis of the previous existence of the basic social-security legal relationship (they arise mainly in application of responsibility in the social security system). These relationships are created by:

- procedural legal relationships and
- sanction legal relationships[8]

Other classification criteria of social-security legal relationships are the character of social event and rate of connection between rights and responsibilities in the legal relationship.

In accordance with the theory of social security system is needed to clarify the structure of social-security legal relationships, the subject, content and the object of social-security legal relationships.

3.1. Subjects of social-security legal relationships

Subjects of social-security legal relationships are bearers of rights and responsibilities conferred by legal norms that are realised by their behaviour. In the social security system the bearers of rights and responsibilities (unlike private sector) are marked as a bearer (authority) of social security and natural person marked as an authorized person or policyholder in accordance with the character of social-security legal relationship.[9] The bearer is the subject managing the social security subsystem and usually is also a provider of social security benefits. The claim and payout of these benefits are set by the bearer in specific conditions in administrative procedure. The status of the bearer of social security subsystem is influenced also by the character of the social security subsystem (i.e. insurance company in the insurance system, (specialized) state power body in the state social assistance system, which the law allows to execute the subsystem).

The other subject of social-security legal relationships are mainly physical persons whose position in the system is also affected by the character of the social security subsystem (policyholder, saver, participant, citizen in material need or authorized person) These physical persons mainly apply for claims arising from social-security legal relationships. The subjects include also other natural persons and legal entities to whom the legislation on social security determine the specific status (employers, categories of insurance premium payers, other public authorities set by the law, state).

Determining factor in defining the position of the social-security legal relationship subject is legally defined legal subjectivity, i.e. capability for rights and regulations (passive element of the legal subjectivity) and capability for legal acts (active element of legal subjectivity). We add that jurisprudence distinguishes also delictual and pro-

[8] Pozri Matlák, J. a kol.: Právo sociálneho zabezpečenia. Plzeň: Aleš Čeněk, 2009. 383 s. ISBN 978-80-7380-212-7. s. 69.
Tröster, P. a kol.: Právo sociálního zabezpečení. 5. vydanie. C. H. Beck, Praha 2010. s. 420. ISBN 987-80-7400-322-6. s. 94.

[9] Tröster, P. a kol.: Právo sociálního zabezpečení. 5. vydanie. C. H. Beck, Praha 2010. s. 420. ISBN 987-80-7400-322-6. s. 94.

cedural capability. Capability for the rights and responsibilities means that the subject has the rights and responsibilities in legal relationships. This responsibility arises for the subject by his birth and ends by his death, or declaration of death. Legal capability means that the subject is able to acquire the rights and responsibilities in social-security legal relationships by his own legal acts. This category of legal subjectivity is not set uniformly in legal regulations of social security. In the social security system this capability acquires natural person reaching the age of 15 (person under the age of 15 has to represented be a legal representative), in the healthy insurance system is exercised the concept of civil legal subjectivity. In the case of inception of the claim for some benefits the legal act capability is determined separately. If the social security subsystem does not determine the legal act capability separately, it is necessary to determine it from the character of procedural proceedings (procedural norms). It is necessary to identify also the private range of the legal norm regulating the legal relationship to determine the legal subjectivity in the social-security legal relationship.

3.2. Content of social-security legal relationships

Content of social-security legal relationships is created by the complex of rights and responsibilities of subjects of these legal relationships. These rights have substantive as well as procedural character. Generally, the primary responsibility of the secured person for the purposes of arise the legal claim for benefit of the social security system is to meet the conditions required for the granting of benefits. At the same time is valid that a secured person enters into social-security legal relationships because of a potential risk of arise of social event covered by the benefit. Subsequently, after the fulfilment of the obligation arises for a secured person the right for granting of benefits. On the contrary, the securing subject has the right to require a vindication of fulfilment of conditions associated with the claim and following pay out of benefit of secured person (benefit claimant). And at the same time the responsibility of a securing subject is to provide a particular benefit to secured person after proving the fulfilment of conditions connected with confer and following pay out of benefit.

The higher rate of mutual rights and responsibilities in social-security legal relationships show the legal relationships that regulate systems based on insurance principle than systems built on security principle (especially it is an area of financing of these systems).

3.3. Object of social-security legal relationships

The jurisprudence defines the object of legal relationship (including social-security legal relationship) as the reason why subjects of law enter the legal relationships.[10] In the field of social security the object is providing (securing) **the benefit and service** for subject in the case of arising the situation that is socially recognized as **a social event** (*more about the definition in the following text*). Definition of the benefits and services provided from the social-security legal relationships regulating the social se-

[10] Prusák, J.: Teória práva. 1 vydanie. VO PF UK. 1995 Bratislava. ISBN 80-7160-080-6. s. 284.

curity system determines so called objective range of social security system.

Classification criteria of benefits and services of social security system include mainly:

- claimability (are divided onto obligatory, optional and combined. The claim to obligatory benefits and services arises by the fulfilment of legal conditions. In the case of optional benefits the social security authority decides to grant a claim to optional benefit on the basis of the right consideration presented by the decision with constitutive effects. In the case of combined benefits fulfilments have partly optional and partly obligatory character).
- form of fulfilment (divided into cash benefits and material benefits),
- length of time for payment of benefits (disposable, regular, time limited by the payment, i.e. supporting time),
- character of social events covered by the payment of benefits and services (are divided into fulfilment connected with some social security subsystems and other types of social security),
- according to applied redistributing mechanisms in social security (are divided into credit fulfilment (they especially relates to the length of insurance), social fulfilments (e.g. material need benefit) and combined fulfilments).

3.4. Inception, change and termination of social-security legal relationships

The inception, change and termination of social-security legal relationships depend on the existence of legal facts whose legal norms connect the inception, change and termination of these legal relationships (as well as the inception, change and termination of subject´s rights and responsibilities of these relationships). We classify legal facts mainly in terms of expression of subject´s will, i.e. legal facts dependent on the will of a subject marked as legal acts and legal facts independent on the will of a subject marked as legal events.

Legal act is an expression of the subject´s will and it is connected with inception, change and termination of social-security legal relationships (ex parte legal acts are typical, e.g. request for benefit claim).[11] Some legal acts that admit or declare the right for benefit or service to the participant have a special position. Official acts cause the inception, change and termination of social-security legal relationships if they confess the right, change the right (responsibility) or cause the termination of the right by their effects (it is about ex parte legal acts of constitutive character unlike ex parte legal acts of declaratory character that only validate a legal claim established by other legal facts). Legal facts of subjective as well as objective character might be not executed in the expected scheme of the objective (valid) law, but it can also contradict, then they refer to as an a lawless behaviour and lawless status. Lawless behaviour gives rise to responsibility legal relationships which purpose is the correction of affected rights and responsibilities of legal relationships and their implementation into the legal status (e.g. the reduction or deprivation of unjustly claimed benefits or vice versa, claim

[11] Macková, Z. a kol.: Základy práva sociálneho zabezpečenia. Bratislava : Prosperity, 2001. 300 s. ISBN 80-968219-3-8. s. 51.

of the benefit or increase the sum of benefit). The basic classification of legal acts in terms of jurisprudence (expression of will and the form of expressed will) is expressed in social-security legal relationships as ex parte and formal legal acts (bilateral legal acts are brought into the social security system through the old-age pension savings and supplementary pension savings that have private signs unlike the total statutory concept of social security).

Social security system describes **legal events** as social events. **Social events** are legal events which arise independently on the individual´s will and valid law connects consequences demonstrated by inception, change and termination of legal relationships. These are situations in life, which the social security system brings together with claim to some benefits or services of social security.[12] For this reason these situations must be proven and officially verified. Life events are working disability (temporary or long-term disability also known as invalidity), pregnancy, maternity, unemployment, old age, death (the minimum catalogue of social events is includes Social security (minimum standards) convention (No.102, Geneva 1952).

Jurisprudence of social security divides social events into:

Natural – biological (birth, death, old age)

- social (gainful occupation, start a family)

Unnatural – biological (disease, invalidity)

- social (social exclusion)

Direct – direct relation of the person to the legal consequence (temporary working disability)

Indirect – authorization of the person of the social event (nursing benefit, widow´s/widower´s pension)

Foreseen – legal fact is known as well as the time of this event (retiring age)

Predictable – legal fact is known but the time of the fact (death) is unknown

Unpredictable – e.g. invalidity.[13]

Finally, we can divide social events according to social security systems that cover them by benefit fulfilments, i.e. social events of the insurance system, state social support and social assistance system.

The legal facts in terms of the existence of the number of legal facts causing inception, change and termination of social-security legal relationships may be classified as **a complex legal facts and simple legal facts**[14] (for entitlement to benefits and services is generally required the existence of more than one legal event).

The legal facts do not cause only arise but also the **change** of social-security legal relationship and its elements like subject, object and content. However, the change of the subject due to specialization of social-security legal relationships in social security of individual´s status can not occur, because the most frequent change occurs in the

[12] Macková, Z.: Právo sociálneho zabezpečenia : Všeobecná časť. 1. vydanie. Šamorín: Heuréka, 2009. 162 s. ISBN 978-80-89122-53-0. s. 129.

[13] Matlák, J. a kol.: Právo sociálneho zabezpečenia. 1.vyd., Bratislava: Vydavateľské oddelenie PRAF UK, 2004, 442 s. ISBN: 80-7160-190-X. s. 50-51.

[14] Tröster, P. a kol.: Právo sociálního zabezpečení. 5. vydanie. C. H. Beck, Praha 2010. s. 420. ISBN 987-80-7400-322-6. s. 78.

content of these legal relationships. Changes in the content of social-security legal relationships are mainly caused by legal acts or illegal acts.

Termination of social-security legal relationships occurs as well as a consequence of legal fact, mainly legal event (e.g. the termination of legal relationship founding obligatory insurance, subject´s death) or also other legal fact (e.g. exhaustion of supporting period of paying out the benefit or individual legal act issued by the social security authority).

Social-security legal relationships, of which obligatory benefits and services are provided, arise from social events. In the case of social-security legal relationships, of which optional benefits and services are provided, these legal relationships arise on the base of legal acts or official acts.[15]

3.5. Social-insurance legal relationship

Within the group of social-security legal relationships plays the most important role a social-insurance legal relationship in the social security system, which we will talk about in this part.

Social-security legal relationship was *(earlier in the text)* defined as legally regulated social relationship, which participants realize constitutional social rights by application of prescribed social model with the aim to deal with the effects of social event and to ensure basic living conditions. Within the bounds of insurance system the social-insurance legal relationships are created. Social-insurance legal relationship is a set of rights and responsibilities between the bearer of the particular insurance system and the policyholder.[16]

The jurisprudence divides the stated relationship into insurance relationship and benefit relationship. An **insurance relationship** can be defined as a legal relationship between the insurance carrier and the policyholder, which is established on the basis of a legal fact and has a specific attribute – contribution obligations. The legal fact underlying the establishment and existence of statutory insurance is the foreseen exercise of an occupation (or exercise of an occupation to a certain extent), which, from the historic standpoint, corresponds with the Bismarckian insurance model. Subsequently, remuneration or income from the occupation subjecting an income tax[17] is the basic element of insurance. The contribution obligations and, in the system of social insurance, also the amount of benefits provided are derived from income. This legal relationship may also be multilateral (e.g. one side of the relationship may include both the employee and the employer). The insurance relationship establishes the policyholder's entitlement to the future receipt of benefits and the obligations of the policyholder and other payers of premiums. The legal fact underlying the establishment and existence of voluntary insurance is a person's intention to enter into

[15] Macková, Z.: Právo sociálneho zabezpečenia : Všeobecná časť. 1. vydanie. Šamorín: Heuréka, 2009. 162 s. ISBN 978-80-89122-53-0. s. 132.

[16] Matlák a kol.: Právo sociálneho zabezpečenia. Vydavateľské oddelenie Právnickej fakulty UK. Bratislava 2004. s. 442. ISBN 80 – 7160 – 190 – X. s. 62.

[17] Matlák, J. a kol.: Právo sociálneho zabezpečenia. Vydavateľské oddelenie Právnickej fakulty UK. Bratislava 2004. s. 442. ISBN 80 – 7160 – 190 – X. s. 57.

an insurance relationship expressed in the prescribed form (application). In terms of content, there are three elements of the internal structure of an insurance relationship regulated by law – the assessment basis for insurance premiums, the reference period for determining the assessment base and the premium rate. The **benefit relationship** is a legal relationship arising between the benefit provider (usually the insurance carrier) and the policyholder (or former policyholder) when the relevant social event has occurred and the policyholder has met all the requirements for providing the benefit. On the one hand, the benefit provider, after examining whether the requirements for the provision of the benefit have been met, is obliged to provide the benefit (in a certain amount and for a certain period of time); on the other, the policyholder, in the position of benefit claimant, is entitled to require the benefit fulfilment to help him to overcome an unfavourable social situation (during which he is unable to secure an income by the gainful employment). The claimant is not always the natural person who was a subject to the insurance relationship before. This applies to claimants for inheritance pension benefits (e.g. widows, widowers, dependent children – orphans) or inheritance injury benefits that they have become entitled due to a deadly industrial injury or occupational disease. The classification of social events covered by benefits distinguishes between **direct and derived social events** and is also derived from this theoretical reflection.

There are two aspects of the internal structure of the benefit relationship regulated by law – the benefit scheme and the benefit formula (these will be clarified in more detail in the section on benefit relationships). In exceptional cases, the situation may occur when the conditions for granting a benefit have been met, yet the benefit is not provided. These are the so-called facultative benefits (e.g. subject injury benefits – rehabilitation and retraining), where not only the satisfaction of the legal requirements for granting is considered, but also the purposefulness and the individual need for granting the benefit by "subjective consideration".

Benefit scheme represents a summary of the assumptions required by law to inception of a claim to (pension) benefit and these assumptions have general as well as specific nature. The general conditions of benefit claim include insurance (or referred to as a social) event and special (secondary) condition for inception of the benefit claim is the foreseen form of participation in the social security system or permanent residence in the territory where appropriate social security system is applied. We define insurance-mathematical parameters, or quantities, that determines amount of the benefit and derives its value by both, the conditions for inception of benefit claim and elements of insurance relationship (e.g. the amount of levy) as **benefit formula** (under the current legislation it means percentage expression of daily assessment basis in the health insurance system or multiplication of average personal wage point, pension insurance period and current pension value in the pension insurance system).[18]

The above clearly shows that the **insurance and benefit relationships, which occur in three variants,** are mutually interrelated. In the first variant, there is only an insurance relationship during which the policyholder fulfils his obligations to meet the requirements for granting benefit (in particular, the required period of insurance, also called the 'waiting requirement' for granting benefit, e.g. 15 years of pension in-

[18] Matlák, J. a kol.: Právo sociálneho zabezpečenia. Vydavateľské oddelenie Právnickej fakulty UK. Bratislava 2004. s. 442. ISBN 80 – 7160 – 190 – X. s. 57.

surance for the purpose of the granting of an old-age pension). In the second variant, there is only a benefit relationship – this occurs when the relevant social event has occurred and the policyholder has demonstrated the fulfilment of the conditions for granting benefit (e.g. old-age pension recipients who do not run a gainful occupation).

Finally, in the third variant, the insurance and benefit relationships exist simultaneously. This variant corresponds with the situation of an old-age pension (or invalid pension) recipient who is still running a gainful occupation, i.e. the pensioner fulfils his or her contribution obligations and, at the same time, receives pension insurance benefits.

The insurance and benefit relationships illustrate the fundamental attributes of an insurance system, mainly participation, relationship between solidarity and equivalency and benefits assessment from the income of a gainful occupation *(see below)*.

4. CHARACTERISTICS OF THE INSURANCE SYSTEM

Insurance system is the most important system (or pillar) of the social security system of the Slovak Republic according to the extent of legislation as well as to the extent of covered social events. From the organizational point of view, the insurance system is divided into insurance social security subsystem and health insurance subsystem. Separate existence of these subsystems of the insurance system is based on the fact that both systems apply the principle of universality in varying degrees and the different nature of the services they provide. At the same time both systems include deeper internal division.

According to the nature of the social events the social insurance system is organizationally divided into subsystems:

- sickness insurance set up for a case of loss or reduction of income from an occupation and to provide income due to temporary disablement, pregnancy and maternity,
- pension insurance which is also internally divided on pension and disability insurance. Old-age insurance is insurance providing income in an old age and in a case of death the disability insurance is a protection against the decline in earning capacity due to long-term illness of the policyholder and against the death,
- unemployment insurance created for a case of loss of income from an occupation as a result of unemployment and to provide income in unemployment,
- injury insurance created for a case of injury or death due to an industrial injury (or professional injury) and occupational diseases,
- guarantee insurance created in a case of insolvency of the employer to meet the employee´s claims and the payment of outstanding contributions to old-age pension saving by an employer.

Injury and guarantee insurance are not typical insurance schemes because their policyholder is the employer, the recipient of benefits is the employee (i.e. a natural person carrying on business under one of the agreements on work performed outside the employment). With its organisational principles and a different method of insurance, the public health insurance system forms a part of the uniform system of health insurance. It also has a second part, which is individual health insurance. This type of health insurance is built on a contractual, private law basis (this is the part of healthcare not financed from public health insurance).

Insurance system is primarily represented by a fundamental element of the building, a particular method of insurance, which is an expression of the principle of insurance. **The insurance represents** (legal) relationships between two subjects in which one of the subjects shall undertake to provide (benefit) fulfilment of the policy

in insurance (social) event, if the other subject (policyholder) meets certain conditions before or after the occurrence of the insured event. The policyholder in the case of commencement of insurance event usually provides a requital to the insurer for acceptance of the payment in the form of premiums. For some groups of policyholders that burden of contribution obligations takes state because of dependency on aid and social solidarity (e.g., policyholder on maternity and parental leave, taking care of children, many of the state-insured for health insurance purposes).

The insurance system is characterised by the following **attributes**:

- generality (or even universality) is the basic approach in terms of the personal scope of the insurance schemes,
- commencement of compulsory insurance (or its obligatory part in the insurance system) irrespective of the individual's will. The commencement of ex lege insurance is not bound with performance of the obligation to report the commencement of compulsory participation in a system by an individual (e.g. an employer does not inform The Social Insurance Agency and the health insurance company about the entering into an employment of a new employee. The obligatory of the commencement of insurance is limited by facultative forms of the insurance, which gained in importance after the social security reform (in 2004),
- insurance including multiple insurance in the horizontal level (if the employee uses an optional form of participation, e.g. in pension insurance) as well as in the vertical level (the existence of several reasons founding a compulsory insurance),
- self-funding associated with creation of funds (premium is concentrated here which finance the payment of benefits of the subsystem). The sign of self-funding with regard to the requirement of long-term sustainability of social security systems is combined with the determination of the amount of premiums (i.e. quantity of the contribution obligations of premium payers). The stated sign is related to the term of running funding, which reflects the fact that the amount of levy (premiums) is used in real time for the payment of benefits (the term is most often associated with characteristics of a pension insurance as ´pay as a go´ system),
- assessment (calculation) of benefits is linked to realized income from gainful employment. This is then reflected in the purpose of the benefits which is to replace the absence of income in the social event by the payment of benefits which took place at the individual participating in the social protection system.
- the untargeted nature of the benefit granting (essential distinguishing feature towards the social assistance system), i.e. the existence of reliance of policyholder (or the benefit claimant) on the benefit granting is not examined. This feature is not fully applied in the compulsory public health insurance system (e.g. emergency healthcare),
- participation, which is a clear consequence of the applied principle of insurance. Participation is a requirement for individuals to meet one of the conditions for the grant of the benefit, which is known as the waiting condition by performing the contribution obligations (in the case of an employee, especially his employer bears the levy burden),

- territoriality, by which the health insurance system is characterized means that each individual located in the territory of the Slovak Republic must demonstrate participation in the health insurance system of the Slovak Republic provided that he is not a subject to any other national health insurance system. In the social insurance system the sign of territoriality is weakened due to his close ties to the base construction element of the system, which is the earned income of the individual,
- a guarantee, we know two types of guarantee. A legal guarantee means an access to the insurance system and entitlement to a benefit under the same conditions for every policyholder as well as preservation of acquired (benefit) entitlements acquired by individuals/policyholders. The economic guarantee is the result of applied insurance principle within the model of social protection, which provides a basic social protection to the individual in the form of benefit payment in determinable sum based on predetermined legal criteria. This sign is applied in the social insurance system (where the state undertakes to provide financial assistance in the event of insolvency to a social insurance carrier), unlike some ´extra´ parts of the pension model and public health insurance scheme, where only control legal mechanisms are exercised.
- solidarity which is a reflection of the fact that the insurance principle is applied within the social protection systems. The degree of solidarity in the insurance system is the result of determining the ratio of its equivalence and reflects the attitude of society to the values of solidarity and helping others. Prevailing rate of equivalence expressing the relationship between the total paid sum and the provided benefit reinforces the merit of system and corresponding method of insurance tends to its private-law form. The rate of representation of both signs defines the parametric setting of components in insurance and benefit relationships.

4.1. Social insurance

This insurance system is a set of rights and obligations of persons expressed in a legal relationship that the jurisprudence of social security system defines as a **social-insurance legal relationship that occurs in the form of basic social-insurance legal relationship and derived social-insurance legal relationship (it arises mainly by applying the liability to policyholders). The basic relationship comprises insurance and benefit relation**, **respectively it occurs in the insurance stage and benefit phase** *(the analysis of this legal relationship is described in chapter 3.5).*

Establishment and termination of insurance relationship (or insurance) in the social insurance system is primarily connected with the establishment of the legal relationship that gives rise to a taxable income derived from gainful occupation[19] and from employment and enterprise (including other self-employment). The stated two types

[19] Income for the purposes of social insurance is the income that is not subject to income tax, because it is enacted by the legislation of preventing of double taxation or because the legislation of SR is applied to the natural person who does gainful employment or an international treaty taking precedence over laws of SR is applied.

of gainful occupation are associated with two main categories of policyholders, **employee and self-employed person**, and also **voluntarily insured person** participated in the subsystem on the basis of voluntary insurance (voluntary sickness insurance, voluntary pension insurance, voluntary unemployment insurance).

4.1.1. The employee category

The concept of employee is not tied to the labour-law definition, but associated with the definition of wage-earning income for tax purposes (with the exception of non-cash income based by previous legal relationship, which is provided from the social fund created by an employer under the Act No. 152/1994 Coll.)

In terms of regularity of achieved taxable income this category is internally divided to an employee who is compulsorily insured on all subsystems of social insurance, i.e. sickness insurance, pension insurance, unemployment insurance, and an employee who has only mandatory pension insurance. Exclusively mandatory pension insured are, besides individuals with the right for regular monthly income, persons in legal relation based on an agreement for part-time student work *(with the exception of secondary school students until the age of 18 whose income under this agreement shall not exceed the €66 per month and full-time university students whose income under this agreement shall not exceed the amount of the €155 per month. Both the maximum income limits are a percentage of the amount of the average monthly wage in the national economy of the Slovak Republic as determined during the last two years*[20]*)* and recipients of old-age pension, invalidity pension (disability pension for years of service) or pension for years of service[21] in legal relation to the basis of work performance agreement or agreement on work activities if they are entitled to a regular monthly income.

From participation in social insurance subsystems **are absolutely excluded** secondary school student and university student during the performance of professional practice, a member of the Election Commission, student of a secondary school until the age of 18 and student of full-time study at a university in legal relation to the basis of the agreement on student work from which the flowing monthly income shall not exceed the income limits mentioned above.

An exception to the mandatory sickness pension insurance and unemployment insurance are natural persons operating in a legal relationship on the basis of the agreement on student work and recipients of old-age pension, invalidity pension (disability pension for years of service) or pension for years of service [22] in legal relation to the basis of work performance agreement or agreement on work activities.

It follows that the commencement of compulsory insurance for sickness insurance, pension insurance and unemployment insurance is tied to the creation of a legal relationship that gives rise to a kind of income anticipated by law. At the same time termi-

[20] If a pupil or student contracts more agreements in one month, he/she will have the right to determine the agreement in which he/she will not have a status of the employee in the case that the income arising from this agreement shall not exceed the specified income limit.

[21] In the case if a pension for years of service beneficiary has reached retirement age.

[22] In the case if a pension for years of service beneficiary has reached retirement age.

nation of compulsory insurance for these subsystems is connected to termination of the legal relationship.

Mandatory sickness insurance and unemployment insurance cease to exist for natural person in the legal relationship of on the basis of work performance agreement or agreement on work activities by granting an old-age pension, invalidity pension (disability pension for years of service) or reaching retirement age of pension for years of service recipient.

Finally, for purpose of injury insurance and guarantee insurance, an employee is a natural person in such a legal relationship with an employer which establishes the obligatory types of insurance.[23]

The employer is a natural or legal person with (permanent or temporary) residence in the Slovak Republic or with the residence (or established branch) in Slovakia (or an EU Member State, EEA or Switzerland), which is a payer of an income from employment for the employee.

4.1.2. Self-employed person category

A self-employed person is defined as a natural person who has reached the age of 18, and who is in relation to employment (enterprise or other exercise of self-employment) registered as a taxpayer (with an exception of a natural person who should perform personal assistance to the person with severe disability according to an agreement on exercise of personal assistance).

The mandatory sickness insurance and mandatory pension insurance *(not mandatory unemployment insurance)* **shall arise** to self-employed person since 1st July of the current calendar year[24], if the turnover (or revenue) from enterprise or other self-employment in the previous calendar year was more than 12 times the value determined as 50% of the average monthly wage in the national economy of the Slovak Republic valid two calendar years ago *(since 1st July 2013 there is a limit of 12 x 393).*

The stated mandatory insurance scheme for self-employed person **shall expire** 30th June of the following year, if its turnover (income including costs) for the previous year was not higher than 12 times the value specified as 50%[25] of the average monthly wage in the national economy of the Slovak Republic valid two calendar years ago. The amount of the average monthly wage in the Slovak Republic found out by the Statistical Office of the Slovak Republic publishes the Ministry of Labour, Social Affairs

[23] For the purpose of **accident insurance** it is a legal relationship, which is defined by the legislation as a standard employment relationship, a state-employee relationship, member relationship simultaneously with employment relationship of an employee to the cooperative, the service relationship (except the judge and prosecutor) and performance of a public office. For the purpose of **guarantee insurance** it is an employment relationship (with the exception of representative state and employers who can not be declared bankruptcy under the Act No. 7/2005 Coll.) and a member relationship simultaneously with employment relationship of an employee to the cooperative.

[24] A compulsory sickness insurance and compulsory pension insurance arise to a self-employed person on 1st October of the calendar year if it he/she has extended the date for filing tax returns. Tax returns are normally filed by 31st March of that year.

[25] by 31st December 2012 it is 44,2%.

and Family every year on 30th April as the amount of the general assessment basis, which is 12 times the average monthly wage in the national economy of the SR for the current calendar year *(amount of the general assessment basis for the calendar year 2011 is €9,432 (i.e., €786 monthly))*.

Mandatory sickness insurance and mandatory pension insurance of self-employed person also shall cease on termination by the day of termination of performance authorization or performance of the activity or the day of cancellation of registration as a taxpayer. The inception and termination of insurance in the case of legal suspension of mandatory insurance of self-employed person and in the case of regaining the position of self-employed person (this is one of the legal facts establishing an interruption of mandatory insurance relationship). In these cases, self-employed person re-enters the insurance relationships of sickness insurance and pension insurance, if a person regained the status of self-employment person in the period since the commencement of mandatory insurance to 30th June of the following year, or the reason establishing the interruption of mandatory insurance of self-employed person ceased to exist.

4.1.3. Optionally insured person category

A natural person reaching the age of 16 and proving the residence might through the expression of will and voluntary form of insurance participate in certain subsystems of social insurance, if the reason for the commencement of compulsory insurance is not filled, or if he/she intends to increase the rate his/her social protection in systems of social insurance, like sickness insurance, pension insurance and unemployment insurance.

The conditions for establishment of the voluntary **sickness insurance and unemployment insurance are:**

1. reaching the age of 16,
2. permanent residence in the Slovak Republic or a temporary residence permit, respectively permanent residence permit in Slovakia,
3. denial of the old-age pension, early retirement pension or disability pension with a decrease in earning capacity by more than 70% and
4. simultaneous voluntary pension insurance.

Conditions for the voluntary participation in the **unemployment insurance are:**

1. reaching the age of 16,
2. permanent residence in the Slovak Republic or a temporary residence permit, respectively permanent residence permit in Slovakia,
3. denial of the old-age pension, early retirement pension or disability pension with a decrease in earning capacity by more than 70% or disability pension to natural person after reaching the retirement age and
4. simultaneous voluntary pension insurance and voluntary sickness insurance. The last condition does not apply to mandatory sickness and mandatory pension insured self-employed person and self-employed person with suspended mandatory health insurance and mandatory pension insurance due to personal and all-day care for a family member (or all-day child care till the age of 10) since 11th day of this need or because of receiving parental allowance.

The legal conditions for the establishment of the voluntary **pension insurance** are:

1. age limit – reaching the age of 16,
2. permanent residence in the Slovak Republic or a temporary residence permit, respectively permanent residence permit in Slovakia,
3. denial of the early old-age pension.

Common formal condition for the establishment of voluntary insurance at social insurance subsystems is filing of application for voluntary insurance. Voluntary insurance arises by the day of register, the earliest date by the day of filing of application and ends on the date of cancel of voluntary insurance, the earliest date by the day of deregistration. Voluntary insurance at social insurance subsystems terminates even for failure to meet the conditions associated with the establishment of voluntary insurance.

4.1.4. Suspension of the compulsory insurance

The social insurance system is a model of social protection, which protects natural persons pursuing a gainful employment from the adverse effects of the social event. In the life of individual occur also situations when he/she does not pursue a gainful employment and consequently is not able to achieve an income of gainful employment. The situations of absence of gainful employment pursuing recognized by legislators represent the reasons for establishing an interruption of compulsory sickness insurance, pension insurance and unemployment insurance for the employee and for the self-employed person. Interruption of insurance results in the exclusion of benefits duty obligation, but also a loss of social protection in the benefit area.

Reasons of establishing for suspension of compulsory insurance are as follows:

- spending time off without wage compensation to employees
- unexcused absence of an employee at work
- employee is released from employment for a long time (without wage compensation)
- pre-trial detention or imprisonment
- parental leave for employee
- personal and day nursing / care for a family member even after 10th day
- duration of temporary incapacity for work after the 52nd week since the beginning
- receiving of parental allowance and current statement of self-employed person about the absence of gainful employment, which established the compulsory insurance
- suspension of operation of a trade or business performance of self-employed person.

The establishment of one of the reasons founding a suspension of compulsory insurance results in termination of compulsory insurance for the employee and the employer and elimination of the reason results in the re-establishment of compulsory insurance.

4.1.5. Contribution obligations

The primary obligation emerging from the insurance method determines the size of the contribution of each **category of premium payers**. While besides three categories of policyholders (employee, compulsorily insured self-employed person and voluntarily insured person) we include to the circuit of premium payers also **employer and state**, who contribute to levy load of an employee and groups of persons in need of increased social protection (to which the state is bound according to the Constitution of the Slovak Republic, e.g. in art. 41 par.1)

The contribution obligations are defined by some parametric elements that make up a particular form of insurance methods. It is a considering period for the determination of the assessment basis, the assessment basis and percentage of premiums. The contribution obligations is also limited by these elements into a **minimum assessment basis and the maximum assessment base** to avoid the situation of changing insurance into tax, respectively tax duty. **Determination of the contribution obligations and its definition varies depending on the category of premium payer and partly on the type of insurance.** Limitation of the contribution obligations is an essential part of the ratio expression of solidarity representation and equivalence in insurance relations.

Within performance of the contribution obligations, the pension insurance is divided into sub-systems of old-age insurance, disability insurance and a special levy in the form of insurance for reserve solidarity fund.

A. Employee and employer

The assessment basis for determining an employee's contribution obligations is an income that employee reaches from a gainful employment within the legal relationship and established a compulsory insurance of an employee[26]. The assessment basis of the employee does not include income that is not a subject to tax, income exempt from tax, the contributions to supplementary pension savings paid by the employer and an income provided by employer to keep an employee (with low-income) at work. The decisive period for determination of the assessment basis is the previous calendar month for which the premium is paid (for sickness insurance, pension insurance, unemployment insurance). **The assessment basis of the employer is assessment basis and the decisive period for each employee.** The percentage of premiums linked to various types of insurance are:

Type of insurance	Employee	Employer
Sickness insurance	1,4%	1,4%
Pension insurance	4%	14%
Disability insurance	3%	3%
Unemployment insurance	1%	1%

[26] An assessment basis also consists of profit share paid by a company or cooperative without any interests of an employee in their basic capital.

Guarantee insurance	-	0,25%
Injury insurance	-	0,8%
Reserve solidarity fund	-	4,75%

Note: If an employee is a saver of pension savings system and retirement premium rate for insurance is on the employer 10% (since 2017 onwards will be gradually reduced to 8% in 2024, while 6% will present rate of contributions to pension savings).

The minimum contribution obligations of the employee are linked to minimum income, which represents the minimum wage (for employee paid a monthly wage). The minimum wage for an employee paid a monthly wage and the minimum wage for each hour worked by an employee includes a mechanism of its annual adjustment Act. No. 663/2007 Coll. of minimum wage. According to the Government Regulation No. 343/2011 Coll. the amount of the minimum wage for 2012 has the value €327.20 (and €1.88. per hour worked by an employee). In the year 2013 is expected the amount of €337.70. The minimum assessment basis of an employee is also the minimum assessment base of his employer. The maximum assessment basis of employee and employer for each type of insurance (except accident insurance), determined as 5-times of the average monthly wage valid two years before the current calendar year. In the case of accident insurance there is no specified maximum assessment basis.

If the insured person defined as an employee was paid an income from dependant activity after the termination of compulsory insurance, then (monthly) assessment basis for the payment of premiums represents the proportion of the income falling upon each calendar month of such insurance in the last calendar year. In the case of persons in legal relation founding them a right for irregular income, giving them only mandatory pension insurance, the (monthly) basis assessment is the proportional part of the income falling upon each calendar month of duration of the relationship.

B. Self-employed person

The contribution obligations of compulsory sickness and compulsory pension insurance for self-employed person are determined by the same parameter elements as in the case of the employee and the employer. The assessment basis of that person is a share of proportional part of the tax base from natural persons´ income achieved by a trade (and by the exercise of other self-employment), not reduced by the premium paid (including health insurance), and a coefficient of 1.486[27]. The proportional part of the tax base is the number of months of exercising an occupation in the relevant period. The decisive period is the preceding calendar year for period determining the contribution obligations from 1st July to 31st December of the calendar year. The decisive period for determining the contribution obligations from 1st January to 30th June of the calendar year is the calendar year two years before the current year. Thus determined assessment basis is applied to the insurance period from 1st July to 30th June of

[27] The stated value of the coefficient will be applied since 1st July 2015; from 1st July 2013 to 30th June 2014 the value is 1.9 and from 1st July 2014 to 30th June 2015 the value is 1.6.

the following calendar year.

The minimum assessment basis of compulsorily insured self-employed person is 50% of the average monthly wage in the national economy of the Slovak Republic valid two calendar years ago. The maximum assessment basis for premium payments for sickness insurance and pension insurance is the same as in the case of the employee and employer and represents 5-times of the amount of the average monthly wage valid in the year two years before the current calendar year.

Type of insurance	Self-employed person
Sickness insurance	4,4%
Pension insurance	18 %
Invalidné poistenie	6%
Unemployment insurance	-
Guarantee insurance	-
Injury insurance	-
Reserve solidarity fund	4,75%

Note: If you are self-employed savers of pension savings and premium rate for old-age pension is 14% (from 2017 to 2024 is gradually reduced to 12% and 6% will present rate of contributions to pension savings).

C. Voluntarily insured person

The settings of defining of the contribution obligations for voluntarily insured persons is similar to that of the compulsory sickness and compulsory pension insurance for self-employed person only with the difference that the assessment basis for the payment of premiums is a sum determined by policyholder within the minimum and maximum assessment basis determined for the self-employed person. Change of the amount of the assessment basis can validly realized by voluntarily insured person after the expiry of six months since the final determination of the assessment basis.

Type of insurance	Optionally insured person
Sickness insurance	4,4%
Pension insurance	18 %
Disability insurance	6%
Unemployment insurance	2%
Guarantee insurance	-
Injury insurance	-
Reserve solidarity fund	4,75%

Note: If the insured person of voluntary pension system is pension saver then premium rate old-age insurance is 14% (from 2017 to 2024 is gradually reduced to 12%

and 6% will be a rate of contribution to pension savings).

D. State

As mentioned above, the state assumes the fulfillment of the contribution obligations for economically inactive persons whose social status requires increased social protection and is the result of performance of family and selected social roles. These groups include a natural person who:

- receives maternity benefit and is in the position of an employee or compulsorily insured self-employed person,
- provide proper care to a child until the age of 6 with permanent residence in the territory of the Slovak Republic, is not covered by pension insurance because of insurance categories of employed or self-employed person, was not granted early retirement or disability pension, did not reach the retirement age, has permanent residence in the territory of the Slovak Republic and filed an application for pension insurance due to that care. *We need to point out that the filing the application must be made within 45 days since the date of birth of the child for the purposes of pension insurance since the moment the child is born, otherwise a mandatory pension insurance arises since the date of filing.,*
- provide proper care to a child with long-term adverse health condition, after reaching the age of 6 with permanent residence in the territory of the Slovak Republic until the age of 18, has no other pension insurance, has not been granted an early retirement or disability pension, has not reached retirement age, has permanent residence in the territory of the Slovak Republic and filed an application for pension insurance because of this care,
- receives cash benefit for care within a maximum of 12 years (counting the period of care for child with long-term adverse health condition after reaching the age of 6), has no other pension insurance, has not been granted an early retirement or disability pension, has not reached retirement age, has permanent residence in the territory of the Slovak Republic and filed an application for pension insurance because of this care,
- performs a personal assistance to the person with a severe disability on the basis of the agreement on exercise of personal assistance in the range of at least 140 hours per month, for a maximum period of 12 years (counting the period of child with long-term adverse health condition after reaching the age of 6), has no other pension insurance, has not been granted an early retirement or disability pension, has not reached retirement age, has permanent residence in the territory of the Slovak Republic and filed an application for pension insurance because of exercise of personal assistance.

These groups of people are referred to also as state policyholders. For these groups of people the state pays only the pension insurance (old-age insurance, disability insurance and insurance for reserve solidarity fund) and if the natural person is a saver of old-age pension savings, then also contributions to the pension system.

The assessment basis of the state for the premium payment of the pension insurance and insurance for reserve fund represents 60% of the average monthly wage in

the national economy of the SR valid two calendar years ago. In the case of a person receiving cash benefit for caring and person performing personal assistance to a person with a severe disability on the basis of the agreement on exercise of personal assistance is the assessment basis of the state 50% of the average monthly wage in the national economy of the SR in valid two calendar years ago.

Type of insurance	State
Sickness insurance	-
Pension insurance	18 %
Disability insurance	6%
Unemployment insurance	-
Reserve solidarity fund	2%

Note: If the insured's state of pension savers savings and premium rate for old-age pension is 14% (from 2017 to 2024 is gradually reduced to 12%).

E. Social insurance company

Carrier of the social insurance bears the contribution obligations for the accident benefit recipients since the date of inception of entitlement to payment of accident benefit until they reach retirement age or granting early retirement to this person. These contribution obligations are performed solely for the purpose of premium for old-age insurance for reason to provide a claim for this person to adequate material security in old age that he/she is not able to provide fully by participation in the pension insurance as a result of serious consequences of an accident at work or occupational disease. The assessment basis of an insurance company represents in monthly terms 1.25-times the amount of paid accident benefit. The percentage is the same as for other premium payers.

The contribution obligations as a fundamental duty of the insurance relationship premium payer **do not perform** if the policyholder does not get a gainful employment income being achieved within the respective legal relationships established such an insurance in social insurance. Such situations are legally defined and referred as the **exclusion of the obligation to pay premiums**. The fulfillment of the contribution obligations even does not occur where there is no objective legitimacy for insurance cover for certain social events. In this case we are talking about **exempt from paying premiums**. Social insurance legislation provides a specific possibility of **additional payment of pension insurance premiums** during the period when the natural person is not able to participate in pension insurance. This legislation aims to prevent the inception of period in the life of an individual, when unable to participate in pension insurance by performance of gainful employment. Three periods are legally defined, the period of suspension of compulsory pension insurance, keeping in records of job applicants and systematic training for an occupation by studying at a secondary school or at university after reaching the age of 16.

The social insurance system specifies situations (notably social events), which ex-

cludes the performance of the contribution obligations for the employee and his employer, compulsorily insured self-employed persons and voluntarily insured persons, in the form of:

- receiving the maternal benefit during the pregnancy and maternity
- temporary working incapacity
- personal and day nursing / care for a family member
- receiving the rehabilitation and retraining benefit
- suspension of compulsory insurance.

In the situation of voluntarily insured persons is insufficient to prove social events (with the exception of the need for personal and all-day treatment / care), but receiving the benefit covering a given social event, namely sickness or maternal benefit.

The social insurance system exempts certain categories of persons from compulsory insurance for certain subsystems by the way of negative definition of personal scope of the subsystems. They include people:

- recipient of a retirement pension, early retirement and disability pensions granted due to a decrease of earning capacity by more than 70% (excluded from the personal scope of unemployment insurance),
- person in custody or imprisonment included in the working process (excluded from the personal scope of unemployment insurance),
- pension insured person after admitting the retirement or early retirement and beneficiary of pension of years of service after retirement age (exempt from the obligation to pay premiums for disability insurance)
- prosecutor, judge (excluded from the personal scope of unemployment insurance).

4.1.6. Insurance payment

The performance of contribution obligations by payer of the insurance includes also the premium payments in determined within a specified period and in the prescribed manner to the beneficiary, the insurance carrier. Each taxpayer performs the contribution obligations individually except the employee who employer pays the sickness insurance, pension insurance and contributions to unemployment insurance for. The employer shall deduct premiums. Role of the state in the social insurance system fulfills the Ministry of Labour, Social Affairs and Family of the Slovak Republic. Premiums are paid on account of the Social Insurance Agency in the Treasury for the calendar month in arrears, in the case that insurance only took part a month, then the insurance is paid only for that part of the month, in a manner on account, by postal order or cash in the Social Insurance Agency.

Maturity of the premium is determined on the 8th day of the calendar month following the month for which the premium is paid. In the situation of irregular income or income paid after the insurance termination is a decisive moment for determining the due date a day of payment of such incomes. **The maturity date of the premium**

is specially designed for the employee and his employer, which is the date for the payment of an employee´s income. If payment of such income in the employer's organizational units spread over different days, due date of payment is the date of the last payment of income within the month. A common feature is that if the due falls upon Saturday or day of rest, premium is payable on the last day of the calendar month following the month for which the premium is due. For all these cases, if the premium due date falls on a Saturday and Public Holiday, the premium due date is the next working day. Maturity of the premium for persons in the legal relationship of the agreements on work performed outside an employment relationship (in particular those on student work) are defined separately.

If the premium is paid in the wrong amount or not paid at all, then the Social Insurance Agency prescribes premiums to natural person or legal entity obliged to pay premiums. The right to prescribe premiums will be in lapse in ten years since the date of payment, with an exception if the employer or compulsorily insured self-employed person has failed to pay registration duty. Failure to pay contribution obligations is associated with penalties in the form of fines for non-compliance of statutory obligations and penalties (0.05% of the outstanding amount of insurance for each day behind schedule). Premium payer may also make a payment of the outstanding amount of insurance through the payment schedule provided to obtain permission from the Social Insurance Agency. Preconditions for allowing the payment schedule of the Social Insurance Agency are the application of insurance payer, temporary illiquidity of premium payer, performance of contribution obligations at the time of application for a permit of payment schedule and proving the capability to pay outstanding premiums within 18 months since the date of allowing the payment schedule.

If the premium was paid in a higher amount, the insurance company uses it for a possible credit claim to the premium payer; otherwise it shall return to the appropriate payer within 30 days of becoming aware of the fact, or receiving a written request for its return.

4.2. Benefit relationships

Object of the benefit relationships is benefit fulfilment (or benefit) that secures materially a natural person in the case of existence of the social event anticipated by law. This chapter briefly outlines the benefit schemes and benefit formulas of benefits provided from social security subsystems, including conditions relating to the payment of benefit.

4.2.1. Sickness benefits

Material scope of sickness insurance are sickness benefit, nursing benefit, equalization benefit and maternity benefit, while outside this subsystem a monetary payment covers the first 10 days of the employee's temporary incapacity to work, provided by the employer under the terms of Act No. 462/2003 Coll..

The general conditions for granting sickness benefit (hereinafter as the „ben-

efit") is the existence of social event and its demonstration by policyholder and the existence of insurance relationship for sickness insurance or lapsing so called protective period. On the side of employee the absence of income is required, which is considered as the assessment basis for the payment of premiums and on the side of compulsorily insured self-employed person and voluntarily sickness insured person the premium payment for sickness insurance in the correct amount (tolerated arrears less than €5) for a maximum period of last 10 years preceding the calendar month in which the reason for providing sickness benefit arose. Any arrears on premiums (for the purposes of entitlement to benefit), the applicant may pay at latest the last day of the calendar month in which the reason for providing benefit arose. The voluntarily sickness insured person as a result of dependence of this form of insurance on the natural person´s will is required to prove the fulfilment of so called waiting condition, which is based on the duration of sickness insurance within min. 270 days in the last 2 years before the occurrence of the social event.

The institute of the protective period is legally defined period of time after the termination of insurance relationship during which effects of social event may show at a natural person, which causes have existed or caused on the body of the policyholder even during the time of sickness insurance. The protective period is within 7 calendar days and in the case of a pregnant policyholder for purposes of the granting the maternal benefit it is 8 months. The protective period does not run but shall end by the day of a new insurance or by an entitlement to pay basic pension benefit.

Within the benefit formula of all sickness benefits there is a common 'calculating parameter' and that is daily assessment basis ('DAB') designated by law defined assessment bases for premium payments in the observed (reference) period. **Daily assessment basis** represents the share of sum of assessment bases from which the policyholder has paid premiums for sickness insurance during the relevant period and the number of days in the relevant period (days of compulsory insurance suspension and exclusion of contribution obligation performance are not counted in). Normally, if a sickness insurance before the occurrence of a social event was created/persisted in the previous year, and on the side of an employee has lasted at least 90 days then the crucial period to determine DAB is the previous calendar year (the whole year or since the commencement of the current insurance) preceding the year of the inception of social event (for voluntarily sickness insured person is required continuous sickness insurance within min. 26 weeks before the occurrence of the social event). If the sickness insurance was established in the current year, in which also social event arose and has lasted at least 90 days on the side of an employee, then the crucial period is the period from the establishment of the current insurance to the end of the month preceding the month of the inception of social event (for voluntarily sickness insured person is required continuous sickness insurance within min. 26 weeks before the occurrence of the social event). If the current employee´s sickness insurance has not last at least 90 days[28], then the crucial period is the previous calendar year, provided that in this

[28] V tomto prípade sa na účely náhrady príjmu pri dočasnej pracovnej neschopnosti zamestnanca rozhodujúce obdobie zistí inak, a to ako obdobie od vzniku aktuálneho poistenia do dňa predchádzajúceho dňu vzniku dočasnej pracovnej neschopnosti. In this case, the decisive period for the purpose of income compensation in the employee's temporary incapacity is determined otherwise, as a period of insurance establishment by the day preceding the day of inception of a

year the employee has received sickness insurance period within min. 90-days with the exception of sickness insurance period obtained by an employer identical with the current employer. If the employee did not receive the sickness insurance period within min. 90 days in the previous year, then for determination of the sickness benefit (to which he was entitled) is applied **assumed DAB** (because the policyholder had no assessment basis for premium payments during the relevant period). The assumed DAB is used also in the case if a social event on the side of an employee and compulsorily insured self-employment person arose on the day of insurance establishment. Finally, the assumed DAB is applied for a voluntarily sickness insured person who was not continuously voluntarily sickness insured for min. 26 weeks before the occurrence of the social event. The assumed DAB is 1/30 of the minimum assessment basis for paying the insurance premiums by self-employed person.

If for self-employment person arise a social event in the same month in which a compulsory sickness insurance arose, then a crucial period for determining DAB is the period from the establishment of insurance to the day preceding the day of the establishment of social event. In this case, a self-employed person must pay the premium at latest in maturity date for that month. This obligation is applied even in the case of voluntarily insured person and in the case of the establishment of benefit entitlement in protective period.

Finally, the critical period for a pregnant employee who was transferred to another job in less than 90 days since the establishment of insurance is defined specifically. This critical period is defined by the establishment of the current sickness insurance and the day preceding the day of a transfer of pregnant employee to another job. To determine the maternity benefit of a pregnant employee who was transferred to perform other work, the crucial period is determined by the day of the transfer. This procedure is also applied in the case of the establishment of benefit entitlement during the period of protection.

The benefit scheme of sickness benefit consists of the existence of temporary incapacity to work (due to illness, injury, quarantine measures), the general conditions for establishment of benefit entitlement for employee, for compulsorily insured self-employed person and voluntarily sickness insured person. **The benefit formula of sickness benefit** is for the first 3 days of temporary incapacity to work 25% of daily assessment basis, and from the fourth day of incapacity to work to the end it is 55% of daily assessment basis. The same percentage is for an employee since 11th day of his temporary incapacity to work. The employee has the first 3 days a claim to reimbursement for income during the temporary incapacity to work of 25% of DAB and from 4th day to 10th of incapacity to work it is 55% of daily assessment basis[29]. Supporting period for providing the sickness benefit is 52 weeks since the occurrence of temporary incapacity to work. The support period is shorter by periods of temporary incapacity to work of the policyholder belonging to the last 52 weeks since the occurrence of (current) temporary incapacity to work, provided that the policyholder was in the last 26 weeks before the occurrence of temporary incapacity to work recognized as tem-

temporary incapacity to work.

[29] The percentage of DAB may by risen in labour agreement up to 80% of DAB for the purpose of determining the amount of income compensation during an employee´s temporary incapacity to work.

porarily incapable to work.

The right for sickness benefit does not arise if the court sentenced lawfully a policyholder for intentional criminal act, as a consequence of which became temporarily incapable to work (or disabled). Entitlement to pay sickness benefit cease to exist if a pregnant policyholder is entitled to maternity benefit (6 weeks before the expected date of birth) or the date on which the policyholder was found a violation of the treatment regimen (prescribed by a doctor).[30] The amount of sickness benefit is reduced by half if the policyholder became temporarily incapable to work (or disabled) as a result of a condition brought about by alcohol or due to other drugs abuse.[31] For the same reasons, the amount of income compensation is also reduced during the employee's temporary incapacity to work.

The benefit scheme of nursing benefit is besides the general conditions for establishment the benefit entitlement also an existence of appropriate care for a sick child, a sick husband/wife, sick parent/parent´s husband (their state of health according to a doctor´s affirmation inevitably needs treatment by another person) and by the existence of appropriate child care until the age of 10 if:

a) child was placed under quarantine,
b) pre-school facility, social service facility or school the child attends have been closed or have been under quarantine or
c) natural person taking care of the child got ill, he/she was placed under quarantine and was admitted to an institutional care of medical facility. The treatment and care is placed emphasis on the form of a personal and day treatment and care.

The benefit formula of nursing benefit is 55% of DAB or probable DAB. The support period is not more than 10 calendar days and for one or more children in the same period is nursing benefit granted only once. The right to pay a nursing benefit shall not arise, if the policyholder is entitled to be paid a maternity benefit, sickness benefit or income compensation for temporary incapacity to work.

The benefit scheme of compensation benefit consists of circumstances that reflect the situation of the employer's duty to redeploy a pregnant employee or a mother until the end of the ninth month after giving birth to another job, because she is not able to carry on previous work because of the ban (pregnant women or nursing mothers until the ninth month after birth)[32] or according to medical opinion jeopardise her pregnancy or maternity. Finally, within the benefit scheme is required to demonstrate the fact that after the redeployment to another job the employee achieves lower income than before the redeployment through no fault of her own. For redeployment to another work is also considered a reduction of normative performance of employ-

[30] The employer has the right to make an inspection aimed to the fact, whether the policyholder (and his employee) stays in the place determined for temporary incapacity to work. The Social Insurance Agency through a medical assessor and other employee shall monitor compliance with the regimen of the policyholder. Payment of income compensation or sickness benefit stops for 30 days since the date of violation.

[31] A consequence of these facts is also an inception of the right of the Health Insurance Agency to pay for medical care provided as a result of the existence of these circumstances and a violation of the medical regimen.

[32] The list of forbidden works is a part of the Act No. 272/2004Coll.

ee, exemption from certain work activities, employee´s redeployment to another department and employee´s exempt from taking the night work. **The benefit formula of compensation benefit** is 55% of the difference between the monthly assessment basis and assessment basis from which the employee pays the premiums for sickness insurance in the months after the redeployment. Monthly assessment basis is 30.4167 times of DAB. The supporting compensation benefit period is the period of pregnancy and maternity of an employee during which she achieves the income of the exercise of allowed work, i.e. until the start of maternity leave and after the end of maternity leave not later than the end of the ninth month after birth. The compensation benefit is for the entire month even if the employee was redeployed to another job or her redeployment ended during a calendar month.

The benefit scheme of maternal benefit contains the conditions for establishment of entitlement to maternity benefit and its payment, which covers the loss of policyholder´s income of a gainful employment due to her pregnancy and maternity (it is an institute for maternity leave for an employee). In addition to the general conditions for establishment of benefit entitlement, such as the existence of insurance (or passage of 8-month protective period, which in view of the establishment of entitlement may expire not earlier than six weeks before the expected date of birth) and the absence of income from gainful employment, which represent the assessment basis of the premium payments is a condition for entitlement:

- to meet the waiting condition, i.e. proving of sickness insurance to the extent of at least 270 days in the two years before the expected date of the date of birth (also a potential period of suspension of compulsory insurance due to parental leave or receiving parental allowance is counted in) and
- care for the newborn after the birth[33]; min. for two of them in a situation when two or more children are born.

The benefit formula of maternal benefit is 65% of the DAB, respectively probable DAB. The support period for payment of the maternal benefit is 34 weeks, i.e. 6 weeks before the expected date of birth and 28 weeks after the birth. Pregnant policyholder can start maternity leave, or she may be entitled to maternity benefit not earlier than 8 weeks before the expected date of birth and she is provided a maternity benefit for 26 weeks after the birth. If the policyholder is a lonely mother[34], the total support period is 37 weeks. If the policyholder gave birth to two or more children, while she is taking care for at least two of them, then the total support period is 43 weeks.

A minimum support period of the maternal benefit is 14 weeks since the establishment of entitlement to maternal benefit and while maintaining the condition for receiving the maternal benefit for 6 weeks after the birth (even when the newborn dies during the birth). An exception to the minimum support period is in a situation if the policyholder on the basis of her own consideration shall not apply for admitting

[33] This condition is met in the case if the child after birth is in an institutional care of medical facility. If a policyholder according to medical opinion is not able to take care of the child due to state of health, the maternity benefit shall be suspended until the date of re-taking the children into policyholder´s care and a maternity benefit is paid until reaching the age of 3 years of the child.

[34] A lonely policyholder is single, widow or divorced woman or lonely woman of any other serious reasons (e.g. missing man, imprisoned man).

the maternity benefit during the 6 weeks before the expected date of birth then entitlement to pay the maternal benefit expires during the period. If a child dies in the period after 14 weeks since the establishment of entitlement to maternal benefit then the support period still lasts for 2 more weeks, max. until the end of total support period. Payment of the maternal benefit takes precedence over the provision of other sickness benefits.

The right to maternal benefit has also other policyholder[35] only if he/she satisfies waiting conditions and condition of taking care of the child. The reason for admitting the maternal benefit to another policyholder who takes a child into his care is:

- death of the mother, then the policyholder can be the child's father or wife of child´s father,
- mother is not able to care for the child due to sickness which according to medical opinion takes at least one month, while not receiving maternity or parental benefit,
- mother after the agreement with the child's father (not earlier than 6 weeks after the birth) and mother does not receive maternity or parental benefit,
- court's decision, by which the child was entrusted to another policyholder.

Support period is for another policyholder who takes a child into care 28 weeks after the establishment of entitlement to maternity benefit (or 31 weeks for a lonely policyholder and 37 weeks for policyholder, who took two or more children in care), not later than reaching the age of 3 of the child.

4.2.2. Pension benefits

Pension benefits are benefits which materially provide coverage of long-term nature social events, what indicates the extensiveness of the legislation and complexity of benefit schemes in determining calculating parameters of benefit formulas of pension benefits. The simplest division of pension benefits in terms of determining the final amount and authorized person is a division to basic (old-age pension, early old-age pension and disability pension) and derived pension benefits (widow's pension, widower's pension and orphan's pension). This section is devoted only to benefits creating the substantive scope of pension insurance as a fundamental pillar of pension model of the Slovak Republic.

The benefit scheme of basic pension benefit consists of a waiting condition requesting min. extent of participation in pension insurance, reaching specific (pensionable) age and specific conditions connected with the relevant pension benefit.

In the benefit formula of basic pension benefit are specific parameters such as the personal assessment basis, personal wage point, average personal wage point and pension value. **The personal assessment basis** is a sum of assessment bases for the calendar year from which a pension insurance premium (except to the situation of an employee for whom the employer fulfills the contribution obligation) was paid (in the correct amount). **The personal wage point** is a ratio of personal assessment basis (i.e., annual income of the policyholder) to 12 times of the average wage in the nation-

[35] Another policyholder is the person who was awarded the custody of the child, the child's father, husband of child´s mother and wife of father´s child.

al economy of the Slovak Republic for the relevant year. The introduction of personal wage point is the basis for significant merit in the pension insurance system.

The average personal wage point (hereinafter as the „APWP") is the division of sum of personal wage of points achieved in each year of the reference period and the period of pension insurance in the relevant period *(corrected from calendar days to years).* The decisive period for the determination of the APWP is years preceding the year in which the insured person has reached pensionable age (up to the year 1984[36]). The value of APWP higher than 3 is not taken into account when calculating pension benefits. The value of APWP determined in the range from 1.25 to 3 shall be reduced in percentage prescribed by law because of restrictions on the strong position of merit (since 2018, 60% of APWP higher than 1.24 is taken into account, since 2013 it is 80%). Solidarity will be preserved in the increase of APWP that occurs if the value of APWP is less than 1, so from the difference lacking to 1 is a percentage added to the original value of APWP (in 2013 it is 17%, since 2018 it is 22%).

The pension value determined for each calendar year is the monetary value for one personal wage point. In the year in which the policyholder applies for admitting the pension benefit the pension value is described as a current pension value. The amount of pension value is periodically increased on 1st January by the growth of the average wage in the economy of the Slovak Republic observed in 3rd quarter (in 2013 it is €10.0098).

Benefit scheme of the old-age pension contains two conditions for admitting the old-age pension:

- live to a retirement age (united age for men and women is 62 years[37]) and
- satisfaction of a waiting condition under which at least 15 years of pension insurance is required.

Benefit formula of the old-age pension is the product of APWP, the period of pension insurance and the current pension value. The benefit formula foresees the possibility of increasing the amount of the old-age pension for a further period of the old-age insurance after the establishment of entitlement to a pension. The original amount of the old-age pension is increased by the amount which shall be determined by multiplying the total personal wage points earned after entitlement to retirement pension and an actual pension value[38]. At the same time this determined amount of the pension will increase by 0.5% for every 30 days of pension insurance obtained after the establishment of entitlement to this pension without receiving it. **If a pensioner was receiving an old-age pension**, then determining of the amount of rise in

[36] In case if a policyholder did not reach the age of 22 in 1984, then the determining period is extend over the year 1984. If he/she is still not reaching min. 22 APWPs, then ascertained number of APWP is applied. If the determining period for defining APWP is shorter than 1 year , then APWP is defined as a ratio of personal wage point and coefficient (ratio of number of days of pension insurance of determining period and number 365). If there are only, so called substitute periods in determining periods, then APWP is 0.3.

[37] Nowadays, the phase of uniting the retirement age is in progress (a specific time is add to lower retirement age of women which is gradational to the number of raised children (1 – 5 is taken into consideration). Since 2017 a ´floating´ limit of the retirement age based on respect of increasing of an average middle lifespan (of men and women) in monitored reference period will be applied.

[38] Increasing the amount of retirement benefit occurs after terminating the employment which based another period of the pension insurance.

pension will be influenced by the personal wage points only in the half rate and the mechanism of increasing the amount of pension by 0.5% for every 30 days of pension insurance is not applied.

In the case of saver's old-age pension savings system the calculated sum of old-age pension is proportionally reduced by the share, by which the saver fulfilled the benefit obligation to the old-age pension savings system. This is valid also in the case of a person who was granted early old-age pension.

Benefit scheme of the early old-age pension, which is a special type of the old-age pension, includes:

- satisfaction of the waiting condition, at least 15 years of pension insurance,
- maximum missing years until reaching the retirement age,
- satisfaction of the "testing" condition with respect to the calculated pension benefit amount (the sum higher than 1.2 times of the sum of living wage for adult natural person, until 30th June 2013 it is the sum of 233.49. In the case of saver of pension saving the amount is higher than 0.6 times of the sum of living wage for one adult natural person).

Benefit formula of the early old-age pension is the same as in the case of old-age pension. A deduction mechanism is applied due to earlier retirement, which is based on the reduction of the calculated pension by 0.5% for each started 30 days after the establishment of entitlement for payment of early old-age pension until the date of reaching pensionable age. An entitlement to pay an early old-age pension shall cease on the date of establishment of compulsory pension insurance of an employee or a self-employed person and lasts no longer than reaching retirement age. Early old-age pension amount paid out on the date of establishment of compulsory pension insurance is increased at the request of the pensioner on the date of termination of the pension insurance for the next period of insurance by an amount determined as a product of the total personal wage points earned for that period of insurance and current pension value. Reaching the retirement age of a beneficiary of early old-age pension this pension is reclassified to the old-age pension. The beneficiary has the right to recalculate the amount of early old-age pension only once a year. This is valid also in the case of a person who was granted early old-age pension.

Benefit scheme of the disability pension, which materially covers the social event of long-term ill health of the individual, consists of:

- proof the disability (long-term ill health, i.e. state that lasts or will last for more than one year). Apply the general concept of disability, i.e. impossible to exercise any gainful activity. Disability is defined as long-term ill health due to which the individual's capacity to undertake employment is reduced by more than 40% compared to a healthy person (when comparing the physical, mental and sensorial abilities of the individual in question),
- waiting conditions based on obtaining a min. range of pension insurance before the occurrence of disability in conjunction with age of invalid (e.g. a person between 24 and 28 years of age must have accrued at least two years of pension insurance, a person older than 45 must have accrued at least 15 years of pension insurance). Satisfaction of the waiting requirement is not required

for a person who becomes disabled due to an accident at work or occupational disease and for a dependent child and for a student of a first doctorate degree study programme in full-time form with permanent residence in the Slovak Republic,

- the date of commencement of disability, i.e. the commencement of disability is tied to certain decisive circumstances such as the person has not been granted old-age pension and does not meet the requirements for entitlement to old-age pension.

A dependent child is a child who:

- is in compulsory education
- is unable to attend school on a full-time basis or undertake employment due to state of health requiring special care (as defined by law – Act No. 461/2003 Coll.), until reaching the age of 26 years,
- is unable to attend school on a full-time basis or undertake employment due to long-term ill health[39], until reaching the age of 26 years.

A dependent child is not a child who:

- has completed second-level university education,
- is a recipient of a disability pension granted due to more than 70% reduction in the capacity to undertake employment.

The percentage reduction in the capacity to undertake employment is determined by a medical assessor of the Social Insurance Agency based on medical reports (including comprehensive functional examination) and data from medical records. Using a statutory list of medical diagnoses, the medical assessor determines the reduction in the individual's capacity to undertake employment according to the percentages defined for each diagnosis (taking into account the remaining capacity to undertake employment, the remaining capacity to attend school, or the possibility of vocational rehabilitation or retraining). The rule is followed that multiple reductions (assigned to multiple medical diagnoses) are not counted together and priority is given to the diagnosis with the greatest impact on the individual's capacity to undertake employment. If other reductions seriously influence the determined percentage reduction in the capacity to undertake employment, the medical assessor may increase this percentage reduction value by no more than 10%. The percentage reduction in the capacity to undertake employment that is determined is not definitive and the value may change according to the actual condition (and the amount of disability pension benefits may change or entitlement to disability pension may end). For this reason, the medical assessor schedules a date for a review medical examination.

Benefit formula of the disability pension is calculated using the same benefit formula as that applied for old-age pension benefits, with the difference that the reduction in the capacity to undertake employment is taken into consideration. If the reduction in the capacity to undertake employment exceeds 70% then, it is considered to be a 100% reduction in the capacity to undertake employment for the purposes of determining the amount of disability pension benefits. The period of pension insurance is also counted differently – a fictional period of insurance from the date of com-

[39] Long-term adverse state of health is a state (disease), which according to medical knowledge should last or lasts longer than one year and requires special care.

mencement of disability until reaching pensionable age[40] is included in the pension insurance period. The amount of the disability pension is the product of the percentage reduction, the APWP, the period of pension insurance and the current pension value.

As was mentioned above, the concurrent receipt of a disability pension and old-age pension (or early old-age pension) is impossible. When a recipient of disability pension reaches pensionable age and satisfies the conditions for the receipt of an old-age pension, he or she receives the higher pension[41]. In the case of specific groups of disabled persons which have accrued no period of pension insurance, the personal wage points is set as a constant at 0.67. Payment of these pensions is funded by the state.

The amount of the disability pension can be reduced to a half or ceased for the same reasons as those applying to the receipt of sickness benefits.

Benefit scheme of the widow's or widower's pension includes the same conditions for granting and method of calculating the amount of the benefit. A widow (widower) is entitled to a widow's (widower's) pension as the survivors of their spouses who:

- were recipients of a basic pension benefit (old-age, early old-age or disability pension) on the day of decease, or
- satisfied the requirements for entitlement to an old-age pension
- had accrued a sufficient number of years of pension insurance for entitlement to a disability pension, or
- deceased due to an accident at work or occupational disease..

Entitlement to a widow's (widower's) pension ceases to exist through marriage or final court ruling according to which their spouse's death was caused by a violent intentional crime committed by the widow (widower).

Benefit formula of this pension benefit is 60% of the basic pension benefit, including the expected pension benefit of the deceased spouse. If a person is concurrently entitled to the receipt of a widow's (widower's) pension and any of the basic pension benefits, the higher pension is provided in full amount, while the lower pension is reduced by a half (in the case of identical amount of pensions, the person chooses which pension will be provided in full amount).

After a widow's (widower's) pension has been granted, it is provided for the period of one year after the decease of the spouse. **After the one-year support period**, widows (widowers) are entitled to the receipt of a survivor's pension, providing that they:

- are carers of a dependent child, or
- are disabled due to a reduction in the capacity to undertake employment exceeding 70%, or
- have raised at least three children, or
- have reached the age of 52 and have raised at least two children, or

[40] The fiction is justified by the theory that poor health does not create a chance to get the period of pension insurance for granting a retirement pension benefit. The performance of employment by a disability pension recipient is not excluded.

[41] If a disability pension recipient requests a retirement pension benefit and he/she was not insured for a period of disability pension, it is unlikely that the calculated amount of retirement pension benefit would be higher than the disability pension benefit.

- have reached pensionable age.

Benefit scheme of the orphan's pension, which provides material security to a dependent child whose parent or adopter has deceased[42], contains the same facts as the benefit scheme of the widow´s and widower´s pension. A dependent child has the entitlement to an orphan's pension for each parent (in this case, the child is called a two-sided orphan).

Benefit formula of the orphan's pension is 40% of the basic pension benefit, including expected pension benefits to which the parent has met the conditions of admission. If the deceased parent was entitled to several pension benefits, the amount of the orphan's pension is determined according to the basic pension benefit. If more dependent children are entitled to the receipt of a widow's or widower's pension after the deceased parent, the total sum of survivor´s pensions shall not exceed 100% the amount of pension of a deceased person (received or assessed on the date of his/her death); and even after valorization of amounts of these pensions. If a dependent child is concurrently entitled to the receipt of a widow's (widower's) pension and a disability pension, the higher of the pensions is provided in full amount and the lower pension is reduced by a half (should the amount be identical, the dependent child chooses which pension will be provided in full).

Entitlement to the receipt of an orphan's pension ceases to exist:

- upon adoption of the dependent child (should the adoption be cancelled, entitlement to the receipt of an orphan's pension is reinstated),
- on the day the child is no longer a dependent child (*see the definition of dependent child*). Entitlement to the receipt of the pension is reinstated if the child regains the status of a dependent child,
- on the day of entry into force of a court ruling according to which the dependent child committed a violent intentional crime which caused the death of the person which gave rise to the orphan's entitlement to a pension.

Valorization of the pension benefits represents the principle of economic guarantees and maintains a certain level of social status (thus implementing the constitutional social right to adequate material security in old age and in the event of incapacity for work or loss of provider). Since 2013 a valorization mechanism of pension benefits is based on the principle of increasing benefits of a fixed amount for each pension separately, always on 1st January of relevant year. This fixed amount is determined by multiplying the increase in inflation and the average monthly wage in the economy of the Slovak Republic determined during the first half of the previous year in relation to each type of income and its average monthly amount determined on 30th June of the previous year. From 2013 to 2017, higher inflation will be gradually taken into greater account and significance of increase in the average monthly wage will be inhibited. Since 2018, the valorization mechanism will be just based on watching the increase in inflation observed by the Statistical Office of the SR in households of pensioners. Pensions are the subject of valorization paid to 1st January of the current calendar year and pensions granted between 1st January and 31st December of the current year. Widow's, widower's and orphan's pension in a given year do not increase if they were assessed from old-age pension, early old-age pension or disability pension

[42] A dependent child has no claim for orphan's pension benefit after the death of his/her guardian or guardian´s husband/wife.

increased in the calendar year. The amount of income first adjusted for the concurrence with another pension is increased since the date of that adjustment.

4.2.3. Unemployment benefit

Benefit scheme of the unemployment benefit, which aim is to mitigate the loss of income due to loss of individual's employment (especially employees), contains the following terms related to entitlement to benefits:

- inclusion of the individuals in the register of job seekers (maintained by the competent Office of Labour, Social Affairs and Family) according to the rules laid down in the Act No. 5/2004 Coll. of employment services and
- satisfaction of the waiting requirement, i.e. requiring at least 2-year period of unemployment insurance (i.e. 730 calendar days) of the last three years prior to inclusion in the register of job seekers. Milder waiting requirement requires to obtain a min. period of 2 years of unemployment insurance over the last four years prior to inclusion in the register of job seekers, in the case that the individual was, prior to inclusion in the register of job seekers, in an employment relationship established for a definite period of time (it does not apply to employment relationships established for an indefinite period of time) or the individual was before the inclusion in the register voluntarily unemployment insured for at least 2 years. This is to provide protection to specific groups of employees, such as seasonal workers or workers with short-term employment.

Any period of voluntary unemployment insurance and period of suspension of compulsory insurance is included in the period considered in connection with the waiting requirement due to taking a parental leave.

Benefit formula of the unemployment benefit is 50% of the DAB and the critical period for determining the DAB is a period of 2 years prior to the date on which the entitlement to benefit arose. If a person did not have assessment basis of the premium payments throughout the relevant period, the shorter term will be taken into account. If a person did not have any assessment bases for the premium payment in the relevant period, the DAB will be determined from the minimum assessment basis for premium payment (valid for self-employed person). If in the crucial period is only a period based by a suspension of compulsory insurance due to parental leave, the critical period for determining the DAB will be the last two years preceding the beginning of the suspension of compulsory insurance. Finally, if in the crucial period is only a period of voluntary unemployment insurance, the period will be taken into account to determine the amount of DAB provided it lasted at least 26 weeks. Otherwise, to determine the amount of the minimum amount of DAB is applied the sum of minimal assessment basis for premium payment.

The maximum rate of DAB represents 2 times of the average monthly salary determined in the two years retrospectively (if the benefit is granted from January to June) or the previous year (if the benefit is granted between July and December) and coefficient of 30.4167.

The support period for unemployment benefits is six months or four months, if it is a case of milder defined waiting requirement. If a natural person is removed from the

register of job seekers during receiving the benefit (for example, due to termination of the employment), and within two years was again placed into the register of job seekers, the person is entitled to benefit in the unspent range of support period. If a natural person has been removed from the register of job seekers and used up at least 3 months of support period may request the payment of a one-off benefit amounting to a half of the amount pertaining to the remaining support period.

Entitlement to the award or receipt of unemployment benefits ceases to exist:

- on the day of removal from the register of job seekers,
- when an old-age pension, early old-age pension or a disability pension due to reduced capacity to undertake employment by more than 70% is granted to the individual.

The payment of unemployment benefits takes priority over the payment of sickness benefits and parental allowances.

4.3. Injury and guarantee insurance of the employer

The general characteristic of the injury insurance system are:

- insurance cover for employer (*excluding judge and prosecutor)* for the event of injury or death of an employee due to a work injury (on-duty injury) or occupational disease for which the employer is objectively responsible. The employer can be relieved of this responsibility at full length or partly only if the circumstances stated in § 196 paragraph 1 and 2 of the Labour Code exist. The establishment of injury insurance of the employer is tied with the establishment of enumeratively defined legal relationships, which subject is an employee (a public servant, a person performing public function, a member of a co-operative employed in the co-operation, a trainee legal prosecution, a person included to perform work in the institution for execution of punishment; *more information in the section on employee insurance category)*. **A work injury is** defined as injury or death suffered by a person, independently of his or her will, by a short-term, abrupt and forceful influence of external forces sustained by an employee while performing work (duty) related tasks or in direct connection with the performance of work (service) tasks to fulfill work (service) and while eliminating an imminent threat of damage to the employer. **The work injury is also an injury** that groups of persons suffered during carrying out activities or directly in connection with these activities during protecting the health, life and property[43] of a group of people preparing for the profession during the period of professional practice[44]. Entitlement to injury benefits have these people and their family members (*husband/wife, dependent children and persons who have been through the implementation of maintenance duty dependent on the*

[43] In particular, it is a voluntary medical officer in Slovak Red Cross, a voluntary member of the Mountain Rescue Service, a natural person associated in the Voluntary Fire Protection of the Slovak Republic, a natural person personally assisting in the accident, natural disaster and other emergencies (or removing their effects) called by a public authority or commander of intervention (at least with his knowledge).

[44] A person is a student of secondary school or a student of university.

injured person at the time of her death, who are provided injury survivor´s annuity, lump-sum reimbursement, a reimbursement associated with treatment and compensation for funeral costs). An **occupational disease** is a disease recognised by a healthcare establishment and included in the List of Occupational Diseases (more than three years back from the detection of the disease) contained in the Act No. 461/2003 Coll. and which was detected to an employee and the groups of people mentioned above for anticipated conditions and during the performance of work (service) duties or in direct connection with the fulfillment of these tasks.,

- „the superstructural system" for sickness and pension insurance *(see benefit scheme of the injury bonus or e.g. benefit formula of the injury annuity that takes into account the receipt of disability benefit)*,
- a basic precondition for granting injury benefit and its payment is to consider the percentage decline of the working ability to run a gainful employment in which the injured person sustained an injury/occupational disease (if the decrease of working ability is more than 40%, the injured person is entitled in certain conditions to injury annuity provided no longer than granting the early old-age pension or reaching the pensionable age; if the decrease of working ability is from 10% to 40%, the injured person is entitled to lump-sum reimbursement). The assessment is carried out by the medical examiner of injury insurance of the Social Insurance Agency,
- the amount of paid injury benefit reflects the fault rate of the injured employee[45]. The amount of the injury benefit or the amount of compensation for injury or death of the injured person is determined according to a benefit formula by the assessment bases for the payment of premiums for accident insurance *(through a calculation parameter of DAB applied in supplementary injury benefit, injuries annuity, survivor´s injuries annuity, lump-sum settlement, retraining and rehabilitation benefit)* that injured employee achieved before the occurrence of the social event, i.e. at the employer where he/she worked under conditions causing formation of an occupational disease or where he/she suffered a work injury. The injury benefits provided as compensation may not exceed 80% of the injured person's prior income. A basic component of the benefit formula for injury benefits is the DAB and the percentage reduction in the capacity for work. The DAB for the purposes of calculating injury benefits is determined similarly to sickness benefits. There is a small difference in the case that entitlement to injury benefits arises later than when the work injury was suffered or an occupational disease discovered. In such a case, the DAB takes into account the growth of average monthly wage in the economy of the Slovak Republic in the relevant years. When determining the DAB for a person injured while performing activities aimed at protecting life, health or property, the DAB is determined as 1/30 of the minimum assessment basis to premium payments (by a self-employed person). If the injured person is a natural person carrying on business under agreements to work outside of employment, the DAB is a

[45] A claim to accident benefits does not arise to an employee, respectively an injured person and his/her family if the employer completely relieves of responsibility for health injury or death to the victim.

proportional part of a bonus falling upon one day.

- the increase in injury benefits is in the period between 2013 and 2017 based on the same mechanism as pension benefits, apart from determining the average monthly amount of the injury benefits and with the difference that the valorization mechanism is only applied in the injuries annuity, and thus determined percentage increase is applied to other injury benefits always on 1st January of the relevant year. Since 2018 the valorization mechanism is based only on allowing for inflation determined by the Statistical Office of the Slovak Republic for the first half of the previous year. Valorization is also applied in legal maximums of amounts of lump-sum reimbursement, compensation of medical treatment costs and funeral.
- as opposed to the general attribute of the social insurance system which is the compulsory nature of the benefit system, the injury insurance includes two optional injury benefits recommended by medical assessor provided in kind or in cash – vocational rehabilitation and retraining and relating rehabilitation and retraining benefits.

Material scope of the injury insurance is formed by **injury bonus** (combined with the entitlement to payment of wage replacement during temporary disablement of an employee and sickness benefit), **injuries annuity** (an entitlement does not arise if injury bonus, rehabilitation or retraining benefit is provided), **lump-sum settlement** (materially covers annual reduction in the capacity for work between 10% and 40%, or if entitlement ceased to exist or entitlement to injury pension did not arise as a result of reaching pensionable age or admitting the an old-age pension), **survivor´s injuries annuity** (represents a financial compensation for the maintenance payments imposed by court order on an injured person who has deceased as a result of a work injury/occupational disease), **lump-sum compensation** (provides a final payment to the spouse and dependent children for the period of three years, the total sum for the spouse and separately for all children is €46,485.40), **vocational rehabilitation and retraining, including their monetary dimension** (materially covers a period of 6 months, max. 12 months, it is an activity of the injured person aimed at obtaining the original working capacity or other appropriate action or acquiring new skills through new knowledge, theoretical or practical training), **compensation for the pain and compensation of the loss of social life** (are lump-sum cash injury benefits adjusted in a separate Act No. 437/2004 Coll., which by point expression compensates damage to health during medical treatment, in eliminating consequences on a person´s health and long term/permanent damage to health, that has unfavourable consequences for the injured person's everyday life, his needs and social situation. The value of one point represents 2% of the average monthly wage (in 2012 it is €15.72), it valorizes every year), **reimbursement of medical treatment expenses** (those expenses that are not covered by public health insurance based on the opinion of the medical review assessor of the relevant health insurance agency, max. reimbursement in the amount of €23,242.70) and **reimbursement of funeral costs** (partly covers the costs associated with the funeral of an injured person, the person who has paid the costs associated with the funeral[46] and entitlement to payment of one third of the sum of mourning

[46] The funeral costs include also costs charged by a funeral service (or the cost of cremation), cemetery fees, costs of setting up a monument / tombstone and costs of treating the grave.

clothing at max. amount €99.60 for 1 person and travel expenses (to the place of funeral and back) has a natural person who shared the same household with the injured person on the day of decease and dependent children of the injured person. The maximum amount for reimbursement of funeral costs is €2,324.40 and the same amount for funeral clothing, including travel expenses.).

Guarantee insurance provides insurance in the event of the employer's insolvency and (partially) satisfies employees' entitlements related to employment (*see the section on insurance category of employee to define groups of employees for the purposes of this insurance*). This insurance scheme is also used for the payment of contributions towards old-age pension savings due from the employer. The material scope of guarantee insurance is represented by the guarantee insurance benefit. At the same time, this also serves as insurance for contributions to superannuation employer did not. Material scope of guarantee insurance is only benefit guarantee insurance. **Benefit of guarantee insurance** is a lump-sum benefit payment, the purpose of which is to partially satisfy employees' entitlements arising from employment[47] that cannot be satisfied due to their employer's insolvency. The employer has become insolvent by the date when the bankruptcy petition for the opening of insolvency proceedings was filed at the district court seated in regional court). Subsequently the occurrence of the employer's insolvency is associated with the delivery of the bankruptcy petition. Entitlement to benefit for the employee does not arise if the employment relationship was concluded after the occurrence of the employer's insolvency and the employee was made aware in writing of the insolvency of the employer.

Benefit formula is based on the employee's net pay due from the employer and the benefit may not exceed three times the average wage in the economy of the Slovak Republic in the preceding year or two years ago depending on the period for which the benefit is granted. The support benefit period provides compensation within the scope of a maximum of three months over the last 18 months preceding insolvency or the date of termination of employment relationship due to the employer's insolvency. Under circumstances foreseen by law, the guarantee insurance benefits can be provided in the form of advance payments (amounting to €99.60) that is provided to the actual amount of the minimum wage of monthly salaried employees, if the employer or (preliminary) insolvency administrator do not confirm employees claims from an employment relationship or they do not co-operate with the Social Insurance Agency in determining benefits.

4.4. Public health insurance

Specific organizational and institutional construction of the system of public health insurance to the social insurance system (in particular a sickness insurance subsystem) is caused both by applying different principles on which health insurance is built and

[47] The claims arising from the employment relationship include except the right for salary (remuneration deriving from agreements performed outside the employment), a claim to income suspension for the holiday, in the case of obstructions at work, an immediate termination of employment, an invalid termination of employment, then a claim to compensation for leave, a claim to severance pay, a claim to reimbursement for travel, relocation expenses.

by the different nature of benefits provided. Health insurance, unlike the sickness insurance is built on absolute application of solidarity[48] and medical services paid by the health insurance are benefits in kind, which have no direct link to the insured wage as it is for the health insurance[49]. At the same there is the principle of solidarity in this system supplemented by the principle of universality (*also mentioned in connection with the features of the insurance system)*, which includes the requirement of necessity to cover the whole population in the territory of the Slovak Republic by the health insurance system. At the indicated we identify a sign of mandatory entry into the social protection system and the character of the public system. The stated theses are directly reflected in the definition of personal scope of the compulsory public health insurance.

The purpose of the compulsory public health insurance is to cover financing costs by the performance of contribution obligations arising from its insurance relationships of public health insurance, that arise in the provision of health insurance benefits in kind, particularly in the provision of health care, and that are connected with social events of health insurance, injury insurance (temporary working incapacity due to illness, accident at work or non-work accidents, sick child care, pregnancy and maternity, or also disability).

The basic function of the public health insurance is to ensure payment of health care (including the performance, medicines and medical devices) for public health insurance policyholders in the corresponding scope (what does not exclude a partial payment of the policyholder). Act No. 577/2004 Coll. and Act No. 363/2011 Coll. define the scope of health care, medicines and medical devices (and dietetic foods) covered by public the health insurance and the terms of that payment. Services related to the provision of health care provided in the Act No. 576/2004 Coll. are also fully or partially paid for by the public health insurance. Terms of payment (or co-payment) by the policyholder are specified in the Act No. 577/2004 Coll.[50] and the specific amount of fees is adjusted by the Governmental Ordinance No. 722/2004 Coll. on the amount of payment of the policyholder for services related to providing the health care.

Based on the public health insurance, **fully paid are**:

1. emergency medical care [51]

---

[48] Solidarity in the health insurance system can be expressed in particular by the health care is provided to each policyholder according to his needs and not according to the financial ability to pay the premiums, thus owing the duty to fulfill. Thus, to be provided the same level of health care is also a person who pays less, as the person has lower income or even a natural person who has no income. Unlike the social insurance system the principle of merit is not applicable here, but rather the principle of almost absolute solidarity is applied.

[49] Matlák, J. a kol.: Právo sociálneho zabezpečenia. VO PF UK. Bratislava 2004. s. 442. ISBN 80-7160-190-X. s. 22.

[50] The mechanism of payment for the policyholder for services related to health care is based on the terms of a percentage of the living wage for one adult person per calendar day, provided that the policyholder is not exempted from the payment.

[51] Emergency health care is a health care provided to persons with sudden changes in his/her state of health, which directly threatens his/her life or any vital functions, without providing immediate health care it can seriously endanger person´s health, causing him/her sudden and excruciating pain or cause sudden changes in the behavior under which influence the person immediately threats him/herself or others. Emergency health care is also a medical care provided at the birth

2. enumeratively defined preventive examinations by the law (§ 2 of the Act No. 576/2004 Coll.) in the specified range of medical services and
3. health care services:

3. a) leading to the identification of disease,

3. b) provided in the treatment of the diseases listed in the List of Priority Diseases if they lead to:

a) saving life
b) curing disease,
c) prevention of serious health complications,
d) prevention of worsening the severity of the disease or its transition into a chronic stage,
e) alleviate symptoms of the disease,
f) effective prevention, including mandatory vaccination.

In connection with the payment for the provision of health care is necessary to state the **List of Priority Diseases** in which diseases are stated for which the medical services are fully or partially reimbursed or are not paid by the public health insurance. Health care services of the one third of the diseases mentioned in the List of diseases are fully paid on the basis of the public health insurance, health care services of max. a sixth of the diseases mentioned in the List of diseases are not paid by the public health insurance and health care services of other diseases mentioned in the List of diseases are partially paid on the basis of the public health insurance**.**[52]

Health care services **provided in the basic form in relation to dental caries is fully paid** by the public health insurance **only if** the policyholder had a medical checkup by a dentist in the preceding calendar year. Payment for health care provided in the form of individual medical services is subject to publication of the specific medical service in the **List of Medical Services**[53], which aim is to obtain payment only for healthcare provided correctly, i.e. lege artis[54].

Legal relationship, under which the health care provider provides medical services and makes payments to a policyholder, is carried in the 3-sided relationship model, and it is between the patient – policyholder, the health care provider and the health insurance company. Policyholder in the first relationship fulfils the contribution obligations in the public health insurance system towards health obligations and the health insurance company as a health insurance carrier pays health care provided by the health care provider in legally defined range. The second relationships within the model relationship is the relationship between health insurance company and health care providers, which is based on a contractual basis of the **Agreement on the provi-**

and immediate transfer of a person to a medical facility and emergency transportation of donors and recipients of organs and cells.

52 The list of diseases for which health care services are partially reimbursed or not reimbursed on the basis public health insurance is stated in the Act No. 777/2004 Coll..

53 The list called the List of Medical Services is issued by the Government of the Slovak Republic in the Act No. 776/2004 Coll..

54 Health care is provided correctly, if the performance of all medical services properly determine the diagnosis, providing timely and effective treatment, with a view to cure or improve the person´s state of health by the applying the knowledge of medical science.

sion of health care[55] (§ 7 of the Act No. 581/2004 Coll.) which is contracted in writing for at least 12 months and must include:

1. criteria for the signing up of such an agreement relating to personnel, material and technical equipment of the health care provider and the indicators of quality in certain areas of health care (reflected in the Governmental Ordinance No. 752/2004 Coll.)
2. range of the provided health care,
3. the amount of payment for health care, which must not be higher than the maximum price established by the Ministry of Health in accordance with the law on prices,
4. payment deadline for provided health care, if otherwise agreed, as is generally provided within 30 days of receipt of the invoice by the health care provider.

Finally, the third relationship is the relationship between health care provider and the policyholder arising under the **Agreement on the provision of health care**. Through this agreement the policyholder realizes the **right to free choice of health care provider** (such right may be limited in certain professional groups, such as those of the Armed Forces of the Slovak Republic, the Police Force, the Slovak Intelligence Service or the right is taken away from persons committed to imprisonment. The provider may refuse a proposal of the agreement on the provision of health care only if

a) by the signing up of such an agreement exceeded the acceptable workload,
b) personal relationship of the medical professional to the person to whom the health care is provided, does not guarantee an objective evaluation of their health status or
c) the personal belief of the medical professional providing health care *(this is only for abortion, sterilization and assisted reproduction)* prevents healthcare provision.

The agreement of the provision of general hospital care is signed up in writing for at least six months. It is a part of the original medical records and duplicate shall be given to a natural person or a legal representative.

The right to provide emergency care is not broken by rejection of the proposal to contract an agreement on the provision of health care.

Plurality of the health insurance system is supported by the principle of **freedom of choice/change of an insurance company by a natural person**. *(The insurance company may refuse an application of the policyholder only if the policyholder previously filed an application for health insurance also in another health insurance).* A natural person is obliged to file the application within 8 days since the date of occurrence of the event giving rise to the mandatory public health insurance (e.g., commencement of a gainful employment in the territory of the Slovak Republic). The health insurance company is then required to give the policyholder an insurance card within 5 calendar

[55] The Health Insurance Agency is required to enter into this contract with a health care provider to meet the indicators of minimum public network of health care providers in the territory. At the same the insurance company is obliged to conclude a contract for the provision of health care with any provider of general surgery health care provider if this provider has concluded an agreement for the provision of general surgery care at least one of its policyholder. Finally, the insurance company is imposed a legal obligation to contract an agreement with every provider of medical care and rescue medical services provider.

days since the date of confirmation of the application. The change of the health insurance company may the policyholder make with effect since 1st January of the following year, when until 30th September of the current year he/she has filed an application to the selected health insurance company. If the policyholder has filed an application after 30th September of the current year, the change in the health insurance company will be made up in two years on 1st January. The free choice of the health insurance company is excluded only if the compulsory health insurance shall terminate and re-occur within a calendar year.

4.4.1. Personal scope of the public health insurance

This scope determines the extent of policyholders created on the basis of two criteria, which are the result of the applied principle of universality, **the permanent residency (lex domicili)** and **gainful employment in the territory of the Slovak Republic (lex loci laboris).**

The criterion of gainful employment performance determines the following categories of compulsorily health insured persons who:

- do not have the permanent residence in the territory of the Slovak Republic and pursue an gainful employment in the territory of the Slovak Republic,
- are granted asylum status,
- are in the position of a student from another EU Member State (or foreign student) studying in Slovakia bon the basis of international treaty by which is the SR bound,
- are in the position of an minor foreigner who is present in the territory of the Slovak Republic with no legal representative and is provided care in a social facility by the decision of a court,
- are in the position of a foreigner detained in the territory of the Slovak Republic,
- person committed to custody or imprisonment and
- are dependent child born to a policyholder in another EU Member State.

A common precondition for the establishment of compulsory public health insurance for these categories is that these persons are not subject to any other national health insurance system in another EU Member State, including the state of the Agreement on the European Economic Area and Switzerland.

These two criteria have their exceptions based on respect for the prohibition of duplicative health insurance at the supranational level.

The exception to the participation of a physical person for mandatory public health insurance is if the person:

- has a permanent residence in the territory of the Slovak Republic, but is gainfully employed abroad and at the same time is a subject to the health insurance system in the territory of the state where performs a gainful employment (as an employee or self-employed person) or
- stays abroad in the long term (more than six consecutive months) and is also insured abroad.

The two exceptions are related to the performance of the information obligation

of the insured to its previous health insurance company.

From the mentioned above, we may identify the legal facts giving rise to the mandatory participation in health insurance as a permanent residence in the territory of the Slovak Republic, childbirth[56], termination of self-employment performed abroad by a person residing in the territory of the Slovak Republic, termination of the health insurance of a person abroad who have long resided abroad, the establishment of employment by an employer who has a seat (or permanent place of business) in the territory of the Slovak Republic, the date of obtaining a refugee status with the document permitting a permanent residence in the territory of the Slovak Republic, the arrival day of commitment to custody or imprisonment of a person without a permanent residence in the territory of the Slovak Republic and lastly the death of the policyholder.

4.4.2. Categories of premium payers and their contribution obligations

After defining the premium payer category we shall describe also the parameters determining their contribution obligations, as we were talking about the facts relating to the establishment and termination of the compulsory public health insurance in the previous section. A **participation** in the public health insurance **is tied to the whole life of a natural person**, the change in the performance of gainful employment or its absence represents only a change of the status of a natural person in the insurance relationships of the public health insurance (except situation when health insurance arises abroad). In the field of performance of the insurance relations of the public health insurance is identified as opposed to the social insurance system a fundamental change based on **advance payments obligation of payroll transfers** for the public health insurance.

A. Employee and employer

The status of a natural person in the insurance relationship of the public health insurance is similar to that of the social insurance system. An employee is considered to be a natural person pursuing a gainful employment[57] in the legal relationship from which he is entitled to have an income from employment undergoing an income tax. The status of an employee does not receive only certain groups of natural persons who are entitled to income from a gainful employment because of work performance agreement or agreement on work activities (especially recipients of the old-age pension, disability pension, recipients of the pension for years of service in the retirement

[56] In this case, a child's legal representative submits the application to the health insurance company in the 60-day period since the date of birth of the child. Since the date of birth the insurance company of his mother is a relevant health insurance company of the child.

[57] Gainful employment means an employment of which an income is not subject to tax revenue due to the ban on double taxation, then an employment carried out in the territory of the Slovak Republic to which the regulations of the SR are applied (according to the European coordination legal act) or an international treaty which takes precedence over the laws of the Slovak Republic is applied. Gainful employment is not an activity from which the income is not subject to withholding tax, are not subject to tax or they are free from tax under the Act on Income Tax.

age), including students performing an employment on the basis of work performance agreement. A natural person loses the status of an employee (even though the duration of employment) in the period during which he/she is not entitled to income from gainful employment (e.g. a period of leave without payment). If the employee reaches the other taxable incomes, he/she will fulfil a contribution obligations of it within submitting annual accounts *(please, see the section on the annual accounts of health insurance premiums).*

An employer is like in the social insurance system a natural or legal person (with the place of permanent or temporary residence or registered office in the territory of the Slovak Republic) obliged to provide an income to employee for the performing of a gainful employment *(in other cases it is a payer of income from employment of natural persons).*

Advance premiums for the health insurance is determined by a percentage of income from employment *(as specified in the preceding paragraph),* which is provided by an employer to his/her employees. An amount of the advance payment of the employer is determined from this income by a percentage amount of the advance payment of the employer, and for each employee. Maturity of (monthly) advance premiums is linked to the date of payment of employees' income for the calendar month. The percentage for determining the amount of the advance premiums for the employee is 4% and for the employer it is 10%. This percentage in both premium payers is halved if the employee is a disabled person[58]. The minimum amount of advance premium is a result of the percentage of the amount of the minimum wage for an employee paid a monthly salary. The maximum amount of advance premium for both employee and employer is determined by the appropriate percentage rate of 5 times the average monthly wage valid two years ago. An obligation to pay advance premiums does not arise in the period in which the employee is insured by the state (e.g. receiving of sickness benefit or parental allowance).

Elements of the insurance scheme, the assessment basis and decisive period for the determination are linked to the annual accounts of premiums for the public health insurance. The percentage rates of premiums for the purpose of annual accounts are the same as well as for the other premium payers.

B. Self-employed person

The definition of self-employed person is the same as the definition for purposes of social insurance. The characteristics of self-employed person are reaching the age of 18, registration as a taxpayer as a result of entrepreneurship or other self-employment activities[59].

[58] A person with a disability means a disabled person or a person with a severe disability (with a rate of functional disorder of 50%).

[59] Gainful employment means an employment of which an income is not subject to tax revenue due to the ban on double taxation, then an employment carried out in the territory of the Slovak Republic to which the regulations of the SR are applied (according to the European coordination legal act) or an international treaty which takes precedence over the laws of the Slovak Republic is applied. Gainful employment is not an activity from which the income is not subject to withholding tax, are not subject to tax or they are free from tax under the Act on Income Tax.

Advance premiums for the calendar month are determined (are paid) by a self-employed person by a percentage rate of the share proportion of the tax basis (from the relevant employment), which precedes two years the current year in which the advance premiums are paid (the period from 1st January to 31st December) and a coefficient of 1.486[60]. The share proportion of the tax basis means a part of the income tax (not reduced by premiums to the sickness insurance and premiums paid to individual subsystems of the social insurance) falling upon one calendar month of operation of self-employment during the decisive period (the month during which the person started to operate an employment is not taken into consideration). The percentage rate in this category of the premium payer is 14% and halved in the case if the self-employed person is a disabled person. If a self-employed person reached other taxable incomes, one would fulfill the contribution obligations within the annual accounts of the premiums. A self-employed person is not required to pay advance premiums (or one decides the amount of advance premiums itself, but the minimum is €3) if he/she conducts business for the first year or it is not possible to determine a tax basis within the decisive period.

A minimum amount of (monthly) advance premiums is a result of the percentage rate of the amount specified as 50% of the average monthly wage in the national economy of the Slovak Republic valid two calendar years ago. The maximum amount of advance premiums for self-employed person is determined by the appropriate percentage rate of 5 times the average monthly wage valid two years ago. In a situation when a self-employed person terminated or suspended gainful activity during the current year or the following year and then resumed or started to operate it, it is required to pay premium advances again. An obligation to pay advance premiums does not arise in the case when a self-employed person is insured by the state (e.g. receiving of sickness benefit or duration of a social event after the exhaustion of entitlement to the sickness benefit). The amount of advance premiums for premiums may be reduced by the health insurance company to a self-employed person on the basis of the written request by reason of insolvency. The stated is conditioned by well-founded preconditions that a self-employed person will be able to pay outstanding sums of premiums in the annual accounts of premiums.

C. State

The state assumes the fulfillment of obligation contributions in the public health insurance system for natural persons who find themselves in a situation requiring assistance from the state[61] in order to prevent a social exclusion of these natural persons. These natural persons are describes as state-insured. First of all, it's a dependent child, i.e. the child until finishing a compulsory school attendance and the child constantly preparing for an employment[62], until reaching the age of 26 years (no later than the

[60] This coefficient is applied since 2015; in 2013 the value will be 1.9 and in 2014 it will be 1.6.

[61] The state has undertaken to help certain groups of people in the Constitution of the Slovak Republic, in particular in the Article 41 of the Constitution, in which is declared support for pregnant women, mothers, parents (family) in the care and upbringing of children.

[62] Exception is allowed if the child has already acquired master's degree, or if a child is receiving

age of 30 if attending a full-time study on master or doctorate study programme at university) [63]. A dependent child is considered a child who requires special care and a child with long-term adverse health status. In both cases, the child's health condition results in the impossibility of continuing preparing for an employment or a gainful employment no later than 26 years of age, provided that it has not been granted a disability pension with a decrease in earning capacity by more than 70%. Another group of stated-insured policyholders is the recipient of a basic pension benefit (including a benefit provided from abroad), parental allowance recipient, a person in pensionable age without an entitlement to benefit, disabled person without a disability benefit, a person full-time and properly caring for a child under the age of six years, a person nursing a natural person with severe disability or a close person older than 80 years (who is not located in a medical facility or social services facility), the person listed in the register of job seekers, a person receiving benefits in material need including allowances, a person receiving sickness benefits or exhausted or support period for the payment of benefits provided that there lasts a social event giving reasons for the provision of sickness benefit, a person in the position of personal assistant to the person with a severe disability and other categories of persons referred to in § 11 par. 7 of the Act No. 580/2004 Coll.

The state has a special amount of obligation contributions in the form of advance premiums for these groups of people as 1/12 of the amount specified in the state budget, which shall be apportioned among health insurance companies according to a number of policyholders. The state performs obligation contributions for these groups of people, if their monthly income does not exceed 1/12x (15 x amount of living wage, i.e. €243.22). Otherwise, they are not state-insured policyholders in the annual accounting period. On behalf of the state the Ministry of Health of the Slovak Republic performs obligation contributions, including payment of advance premiums.

D. Dividend payer

A newly introduced category of premium payers is a legal person residing in the territory of the Slovak Republic, which pays dividends (especially they are shares of the profits of a company or cooperative, a settlement share, share in the liquidation balance of a company, a share of income paid to a silent business partner). Payment of dividend is the reason for the commencement of obligation contributions in the health insurance system for a natural person to whom the dividends are paid. For this type of income a maximum level of tax base is increased in the annual accounts at 120 times of average monthly wage observed for two years arrears. The percentage rate to determine the amount of the premium is 14%.

a disability pension benefit with a decrease in earning capacity by more than 70%. Continuing training is the study of the secondary school or university, including the period between the years of study, provided that they continuously follow each other (at secondary school no longer than before the end of the school year if the child does not continue his/her studies at the university, at the university until passing the final state exam).

63 The student has the status of a dependent child until completion of the final state exams or enrollment to university education of the third degree in full time study if the entry is made in the same calendar year as obtained master's degree in full-time study.

E. Self-payer

A natural person, who is not in the position the employee or self-employed person or state-insured and belongs to the personal range of the health insurance, is obliged to perform the obligation contributions to the public health insurance. This natural person is legally defined as self-payer of the premiums (sometimes referred to as a ´voluntarily unemployed person´).

Advance premiums for the calendar month are determined (are paid) by a self-payer by a percentage rate of the amount determined by him, and shall meet the minimum and maximum amount of advance premiums. As with the previous category of premium payers also in the case of self-payer the percentage rate is 14% and will be halved if a self-payer is disabled person. A minimum amount of (monthly) advance premiums is a result of the percentage rate of the amount specified as 50% of the average monthly wage in the national economy of the Slovak Republic valid two calendar years ago. The maximum amount of advance premiums for a self-payer is determined by the appropriate percentage rate of 5 times the average monthly wage valid two years ago. If a self-payer reached other taxable incomes, one would fulfill obligation contributions within the annual accounts of the premiums. An obligation to pay advance premiums does not occur in the case if the self-payer is in a position the state-insured (situation of receiving a sickness benefit or duration of a social event after exhausting an entitlement to sickness benefit or receiving a parental allowance).

4.4.3. Obligation contributions for the public health insurance

An obligation to pay health insurance, including the inception of advance premiums as it was stated in the previous section, by the date of occurrence of the decisive fact establishing the compulsory health insurance (i.e., mainly by birth, obtaining a permanent residence in the territory of the Slovak Republic, commencement of an employment; these factors are included in §15 of the Act No. 580/2004 Coll.). The commencement of this requirement is for each category of premium payers associated with the day of the commencement of their status as a category of a health insurance premiums payer and earning an income of the gainful employment in the extent specified in §10b of the Act No. 580/2004 Coll. in response to the Act No. 595/2003 Coll. (premiums, unlike the social insurance is paid of an income from capital assets and so called other tax revenues).

Quantitative expression of obligation contributions, including payment of advance premiums on insurance fulfils the employer for an employee (except if the employee is self-employed at the same time). **A maturity of (monthly) advance premiums** on the side of the employee and the employer is linked to the date of payment of employees' income for the calendar month. If there are more dates of payment determined differently for particular departments, so the date of payment of premium is associated with the last date of payment (if it is not possible to determine this day, the maturity of the advance premiums will occur on the last day of the calendar month). The maturity date for premiums in the case of a self-employed person and self-payer is determined on the eighth day of the month following the calendar month (the stated categories

of premium payers may contract an agreement with the health insurance company on earlier payment of advance premiums). Facts considered to be a day of advance premiums payment of insurance premiums are the day when a payment was made from the account of insurance payer, the postal order payment day, the day when a cash payment was made in the health insurance company. If the advance premiums was paid properly and in time (i.e., after the due date and incorrect amount), the health insurance company may apply this failure of obligation contributions by a premium payer by reports of arrears or by the Healthcare Surveillance Authority issuing payment assessments in favor of the health insurance company or for payment. The health insurance company has the right to claim the payment of outstanding premium due to non-payment of advance premiums or outstanding premium arrears and interest on arrears. Interest on arrears represents 4 times the basic interest rate of the European Central Bank on the maturity valid on the date of the advance premiums payment or the amount of the arrears, with min. interest rate 15%. The health insurance company may decrease or release the interest on arrears, upon a written request of the employer, for a self-employed person and self-payer, if the delay in performance of obligation contributions was due to advance premiums payment to another health insurance company, or other reasonable situation or an insolvency (provided that in the period no longer than nine months, the taxpayer will be able to pay outstanding amounts of the advance premiums). A penalty associated with non-performance of obligation contributions by a policyholder (except an employee) in the amount max. €10 is a payment of provided health care by the health insurance company only to the extent of urgent care if a policyholder did not pay advance premiums to the health insurance company for three months in a calendar year or a arrears on premiums expressed in the annual accounts of insurance and therefore is contained in the list of debtors.

An arrears statement, unlike payment assessment represents a simplified tool for implementing an outstanding premium by the health insurance company in cases of demonstrable violation of obligation contributions by a payer of premium out of the administrative proceedings. The premium payer is able to make reasonable objections towards the statement within 15 days since the receiving of this statement. If the health insurance company does not accept the objections entirely, it will be obliged to propose a motion to issue payment assessments with premium payer objections and a brief attitude of the insurance company to the objections to the Healthcare Surveillance Authority within 15 days since the receiving. If the health insurance company accepts the premium payer´s objections entirely, either it may cancel the arrears statement or may issue a new statement of arrears which cancels the previous one.

The health insurance company may, similarly to the Social Insurance Agency, allow instalments of the outstanding sums of advance premiums, arrears on premiums, interests on arrears due to the insolvency of the person on the basis of the written request of the employer, self-employed persons and self-payer. The preconditions for this optional license of the insurance company are a legitimacy of assumed existence that the premium payer will be able to pay the outstanding amount due within a period not exceeding nine months and at the time of the decision making to authorize instalments of outstanding premiums the payer properly fulfils the obligation contributions. In the case of non-payment of the deadline for installment payment according to an appointed payment schedule or payment of a lower amount, the full amount

of outstanding premiums becomes repayable.

The right of the health insurance company to claim for advance premiums, interest on arrears and arrears on premiums shall be in lapse after 5 years since the date of premiums maturity. The right shall not be in lapse if the natural person did not fill an application in the health insurance company application for public health insurance or failed to comply with obligation to report relating to the data applicable to the commencement and termination of the public health insurance and the change and the commencement of premium payer (that obligation is also applied to legal representatives). The right to exact the premium and interests on arrears shall be in lapse after 3 years since the date of the acquiring validity of the decision to pay premiums and interests on arrears.

4.4.4. Annual accounts of the insurance premium

The institute establishes the rights and obligations of the premium payer and the health insurance company when comparing obligation contributions determined from anticipated incomes of a premium payer with his/her real income achieved in the monitored period (annual billing period).

The amount of advance premiums for premium paid by a payer is subject of inspection within the annual accounts carried by the health insurance company. In the annual accounts the assessment basis for each premium payer is determined from achieved incomes as the tax basis associated with the appropriate premium payer category of other specifically determined incomes representing a partial tax basis (already mentioned above are the incomes from capital, income from other incomes and dividends) the decisive period for determining the assessment basis for premium payer is the previous calendar year for which the taxpayer was required to fulfil the obligation contributions in the form of advance premiums.

The assessment basis determined within annual accounts is in the case of an employee consisting of incomes from gainful employment, from which advance premiums were paid for premiums and the assessment basis is determined particularly for other special taxable incomes achieved by an employee in the billing period, while the percentage rate of the premium remains the same. The assessment basis of the employer is the same as the assessment basis of each employee. If an employee in the billing period had more employers (simultaneously or sequentially), in the assessment basis amount of the employer shall take into account only the part of the total assessment basis of the policyholder (the situation when the maximum level of the assessment basis was exceeded). This shall be applied even in the situation of overlapping of employee´s and self-employed person´s activities or sequential execution of these activities in the billing period.

In the case of a self-employed person the assessment basis is made by a share of tax basis (from the relevant a gainful employment), which is not reduced by the premiums paid for the public health insurance and premiums for the social insurance system (including a benefit for old-age retirement insurance) and coefficient of 1.486. In the case of a self-payer his assessment basis is the tax basis from a gainful employment. If a self-payer had no taxable income or self-employed person had no incomes or lower

than the amount of the base to determine the advance premiums, a minimum assessment basis for both premium payers is composed of total of sums for minimum basis within a relevant period. The minimum assessment basis represents a total of sum of 50% of the average monthly wage in the economy of the Slovak Republic valid two calendar years ago in the relevant period. The maximum assessment basis is 60 times of the average monthly wage in the economy of the Slovak Republic valid two calendar years ago (with the exception of already mentioned increased limits for dividends). In particular, the state has determined assessment basis, which represents 12 times of the average monthly wage valid two years ago, while the percentage rate of premiums varies according to the possibilities of the state budget for the years (in 2012 it is 4.32% and in 2013 it is 4.25%).

Since 1st January 2011 the health insurance company performs annual accounts of premiums with the exception of the policyholder and his potential employer who:

- in the billing period was not a self-employed person, had no income from dividends and in the position of a self-payer his/her income did not exceed the total sum of a minimum basis and in the position of an employee achieved only incomes from a gainful employment working for one employer, which in all months exceeded 5 times the average monthly wage in the economy of the SR valid two years ago (or for every single month exceeded this limit) and in this position of an employee only achieved incomes from employment or self-employment,
- was during a part of the billing period health insured abroad and a part of the billing period health insured in the Slovak Republic and did not earned an income from the employment,
- had no responsibility to file a tax return for the annual accounts period except the policyholder with income from dividends,
- died or was declared dead.

In the annual accounts of the insurance premiums performs the health insurance company a calculation of the amount of insurance premiums from the assessment basis of each premium payer (except the state) and a calculation of the amount of the overpayment and underpayment of premiums in division according to individual premium payers (except the state). The insurance company is obliged to perform an annual accounts until 30th September of the calendar year following the billing period, while if the policyholder has extended the deadline for filing tax return, he/she will perform the annual accounts until 31st October. If the insurance company does not record all the documents necessary to determine the category of a premium payer until 31st May of the relevant year, the policyholder will be considered to be a self-payer. If the insurance company does not register all documents necessary to perform the annual accounts of the policyholder until 31st May of the relevant year, the insurance company will set the amount of advance premiums and subsequently will perform annual accounts of the amount of the average monthly wage. If the result of the annual accounts of the insurance premiums is the **overpayment of premiums**, the insurance company will send a written statement of the annual accounts at the same time (shall state especially an amount of paid advance premiums, the amount of overpayment and instruction of a possibility to express a disapproving opinion within 15 days of receiving the notice) the employer (or employers) self-employed person and self-payers.

If the result of the annual accounts of the insurance premiums is **underpayment**, the insurance company will issue and send a record of underpayments until the deadline mentioned above to the employer (or employers) [64], self-employed person and self-payer. There is a possibility to lodge an appeal against the record of underpayments within 15-day period since receiving this record. A premium payer is obliged to pay the underpayment within 45 days since the day of validity acquiring of the records of underpayments to the health insurance company (in the case of an employee, his employer shall perform this duty, if he/she is still his/her employee). In the same period calculated since the expiry of period of the submitting a disapproving opinion the health insurance company is obligated to return the overpayment of premiums. If the amount of the overpayment or underpayment is less than €5, the obligation to pay the underpayment or to return the overpayment does not arise (in this case the insurance company shall announce the result of the annual accounts of premiums no later than on 31st December of the relevant calendar year). If the health insurance company shall not pay the overpayment properly and in time, the premium payer (or its legal successor) or the policyholder, who was overpaid, may apply a claim to this overpayment at the Health Surveillance Authority (an employer may apply this claim in the name of his/her employee, if the employee shall request). An employer shall clear overpayment or underpayment of the employee no later than 45 days since the deadline for submitting a disapproving opinion or since the validity acquiring of the record of underpayments. **The right to an overpayment refund of insurance premiums shall be in lapse** after 5 years since the first day of the calendar year following the year in which the annual accounts of premiums should be done. If the health insurance company was not obliged to perform the annual accounts at the premium payer, the right to a refund of premiums paid without a valid reason shall be in lapse after 5 years since the day when the amount of premiums was credited to the insurance company´s account.

The health insurance company proceeds with the performing of the annual accounts of insurance premiums in the name of the state under special rules, and it is required to perform and apply it to the Ministry of Health by 15th November of the relevant year.

[64] If the employer has ceased without a legal succession, then the documents as a result of annual accounts are delivered to the policyholder and the last former employers. In this case, the policyholder pays the occurred arrears on premiums.

5. ORGANIZATION AND ADMINISTRATION OF THE INSURANCE SYSTEM

Within the organizational executive relations of insurance system is necessary to pay attention to social insurance system, health insurance and retirement model.

The social insurance system is administered by the Social Insurance Agency (unlike health insurance companies, it is a public institution) through its organisational units, which are the Headquarters and branches of the agency. The managing and supervisory bodies of the Social Insurance Agency are the General Director, the Supervisory Board (comprising representatives of the government, trade unions, employers and recipients of pension benefits) and the directors of the agency's branches. From the perspective of the financial organization, each subsystem of the social security system has a basic fund, while in case of the shortage of funds for the benefit payments from a fund A Solidarity Reserve Fund is created (a funding is linked to the compulsory pension insurance). Finally, the Social Insurance Agency in order to cover expenses associated with their activity creates An Administrative Fund, which consists of collected premiums in social insurance subsystems.

The operation of, and proceedings related to, social insurance are carried out by the agency's branches, with the exception of proceedings on pension benefits, injury pensions and survivor's injury pensions, which are carried out by the Headquarters of the Social Insurance Agency. The collection and recovery of overdue premiums is carried out by the branches of the Social Insurance Agency. The territorial competence of the branches is determined according to the registered address of the employer's department maintaining payroll records, the registered address of the employer (if payroll records are maintained by an external party), or the policyholder's permanent address. The Code of Administrative Procedure does not apply to proceedings on matters related to social insurance.

The basic activities of the Social Insurance Agency include:

- (organisational and administrative) operation of individual social insurance schemes
- performance of activities related to the old-age pension scheme (register of policyholders and savers, register of old-age pension saving contracts and transfer of contributions to the account of the relevant pension fund)
- performance of activities related to the social insurance system and its schemes (maintaining of the register of employers and personal accounts of policyholders, cooperation with other public authorities within the scope of their competences)
- performance of oversight (of the payers of premiums, recipients of benefits,

developments and changes in health status of individuals, adherence to the prescribed treatment by policyholders)
- decision-making activities in benefit proceedings (award of benefits) and other proceedings (on the existence of insurance relationships, premiums or contributions for old-age pension savings in disputable cases) and application of rights in responsibility relationships in social insurance
- provision of proofs of entitlement to benefits, entitlement to the receipt of benefits and the amount of benefits
- provision of information and advice.

The public **health insurance** scheme is administered by health insurance companies. Natural persons (policyholders) have the right to freely choose their health insurance company and the health insurance company cannot deny them access to health insurance. The organisational structure of a health insurance company as a private (business) company is subject to commercial law regulations, in particular, all health insurance companies must set up an internal audit department. The collection of premiums is carried out by organisational units of health insurance companies. The territorial competence of a health insurance company is determined by the registered address of the employer (or a separate organisational unit of the employer) and the policyholder's permanent address. The Healthcare Surveillance Authority holds a special status in the process of recovery of overdue payments (either overdue advance payments or overdue premiums as ascertained by the annual clearance of advance payments) and imposition of penalties – in addition to inspection and surveillance activities, it issues payment orders related to the claims of health insurance companies (in the case that any objections of the debtor are rejected, a simplified procedure is applied in the form of issuance of statements of arrears by health insurance companies). The Healthcare Surveillance Authority operates in accordance with the Code of Administrative Procedure. An important aspect of the public health insurance system is the monthly redistribution of advance payments and the annual redistribution of premiums among health insurance companies executed in cooperation with the Healthcare Surveillance Authority, which reflects the structure of policyholders of each insurance company (age and gender), the amount of advance payments actually paid by the payers of premiums, and the average cost of healthcare per policyholder (reported for the preceding two years). This mechanism is a reflection of the **effort (principle) to compensate for the risk structure of the portfolio** of each health insurance company. By applying the above redistribution mechanism, mutual payment obligations arise between insurance companies.

In line with the principle of the policyholder's free choice of healthcare provider, an important aspect of the relationship between health insurance companies and healthcare providers is the **process of conclusion of medical services contracts between these institutions**. Health insurance companies are obliged to conclude medical services contracts with healthcare providers at least within the scope of the minimum public network of healthcare providers and for the minimum period of twelve months, in accordance with the criteria (defined by the company) specifying the required per-

sonnel, material and technical framework and healthcare quality indicators[65]. The minimum public network of providers[66] is the smallest permissible number and structure of publicly accessible providers in the relevant territory (a self-governing region or district) that are necessary to ensure effectively accessible, uninterrupted, permanent and professional healthcare with a view to the population of the respective territory, morbidity, mortality, migration and security of the state. The minimum public network of providers applies to outpatient (both general and specialised) as well as inpatient healthcare; however, it does not apply to providers of emergency medical services and pharmacies.

Any health insurance company is obliged to conclude the medical services contract with every provider of general outpatient care who has concluded a general practice contract with at least one policyholder of this company[67]. As regards pharmacies and providers of emergency medical services, health insurance companies are obliged to conclude medical services contracts with every provider.

A medical services contract must contain:

a) criteria for health insurance under which the contract is concluded (see above)
b) range of health care provider that will be implemented,
c) reimbursement for health care (the maximum price may provide the Ministry of Health)
d) maturity payments for health care.

Activities carried by health insurance companies also include:

- the collection and confirmation of public health insurance applications, issuance of health insurance cards and issuance of European health insurance cards,
- collection and redistribution of public health insurance premiums,
- annual accounts of premiums for its policyholders
- performs an annual account of their premiums to policyholders,
- provision of information services to other health insurance companies and policyholders,
- provision of advice to policyholders and payers of premiums,
- payment of the charges for medical services provided by healthcare providers,
- inspection activities (especially inspections of premium payers and healthcare providers),
- analyses of prescription of medicines,
- recovery of overdue public health insurance premiums, including penalties, and exercise of claims arising from the redistribution of premiums in accordance with a special regulation, based on a final court ruling,

[65] Indicators of quality are involved in the Act No. 752/2004 Coll., while the Ministry of Health of the Slovak Republic defines and regulates methodically their use.

[66] Within the minimum public network of providers is created a firm network of providers (definition of institutional health care providers in order to ensure the provision of emergency medical care) and end network of providers (setting institutional health care providers who provide specialized (highly specialized) health care). A minimum network according to articles 1, 3 and 4 will be enacted by the Act. A public minimum network is defined by the Act No. 640/2008 Coll..

[67] A stated agreement will cover a relation between a doctor and a patient (policyholder).

- provision of contributions to policyholders to cover medical treatment, in particular medical treatment approved by the health insurance company in advance and delivered by a provider who has does not have a medical services contract with the health insurance company,
- maintaining of the register of policyholders waiting to receive planned medical treatment.

A pension model is from the organizational-executive point of view a three-pillar pension system[68] consisting of a benefit defined (general) system based on continuous funding of pension benefits, and two fund-funded contributory pension systems. We are adding that a pension security system for professional soldiers, police officers and equivalent types of Forces (e.g., Fire Department, Railway Police, Mountain Rescue Service) is built distinctively.

Continuously funded universal and basic pension system, i.e. a pension insurance system, in terms of its organizational and system structure and a form of participation, shows signs of publicly organized, continuously funded, compulsory insurance system with benefit defined dimension. The Social Insurance Agency established as a public institution with organization units of headquarters and branches (their territorial districts are defined by the insurance company status and do not copy administrative divisions as government authorities) is responsible for ensuring the performance of the pension insurance as a subsystem of a comprehensive system of social insurance. The internal organizational structure of the Social Insurance Agency was described in the context of the social insurance system. A Solidarity Reserve Fund, which was created as both a financial reserve for a possible deficit in the other basic funds and it is intended to cover losses of accumulated savers´ contributions in the old-age pension insurance system if a court legally decides in a situation of intention reprobated action of pension management company (hereinafter only as PMC) or the depositary is distinctively connected with the pension insurance system in terms of obligation contributions.

The primary sources of funding for pension insurance system are:

- payroll transfers of policyholders and premium payers including sanctions for non-compliance of the obligation contribution
- transfer (or financial help) between the basic social insurance funds under the conditions described in §293ai of Act on Social Insurance (we consider it a non-system step due to the requirement of financial stability of the system) and
- returnable financial assistance provided by the state in the event of insolvency of one of the basic funds of social insurance system.

Secondary and marginal sources of funding of the insurance system are other incomes of the Social Insurance Agency such as donations, interests on deposits of the Social Insurance Agency in the State Treasury.

The Social Insurance Agency manages collected pension insurance premiums divided into old-age insurance premiums, disability insurance premiums and premiums

[68] About a characteristic of a three-column pension model of the SR, see Lacko, M: Nová úroveň sociálnopoisťovacích právnych vzťahov po reforme sociálnej oblasti v SR. In.: Zborník z vedeckej konferencie doktorandov PF TU „Súkromné a verejné právo súčasnosti" Trnava 2005. ISBN 80 – 8078 – 065 – X.

to the Solidarity Reserve Fund in individual funds (Basic Pension Fund, Basic Disability Insurance Fund and Solidarity Reserve Fund). The Social Insurance Agency can handle the funds of relevant basic funds only in accordance with and within the law, which means that they cannot be used in financial transactions for the purpose of evaluation. Administrative expenses incurred during the performance of the pension insurance are paid from funds of already mentioned Administrative Fund.

The old-age pension savings system as the first funded contributory pension systems is in terms of organization and system structure and forms of participation mandatory and single participation contributory system of individualized assessment with investment evaluation of individual financial contributions accumulated by a saver in order to receive a pension annuity (life annuity). A specific feature of this system is that from the institutional and organization perspective, the Social Insurance Agency which runs also the registry of agreements on old-age pension savings (contracts are concluded between the saver and PMC) realizes a contributory phase in favor of the bearer of old-age pension savings, i.e. a pension management company. The stated in connection with the existence of insurance relations in the old-age pension savings and with a direct link to the conditions of payment of benefits means that the old-age pension savings system is a superstructural system towards the general pension insurance system from the organization-executive point of view. Consequently, the Social Insurance Agency is obliged to cede contributions to retirement pension saving for unassigned payments to the relevant PMC within ten days since the assignment of contribution payment of old-age pension savings to saver and within 60 days of their assignment to the Social Insurance Agency´s account kept in the State Treasury (but not earlier than the maturity date of these contributions), including penalties for unceded contributions to the current account for unassigned payments of PMC from the Administrative Fund.

The old-age pension savings system shows signs of a private superstructurally organized individual insurance system (towards the pension insurance system) with a defined premium size and with capital investment of funds owned by a saver and managed by a private company. A property right is underlined by an institute of inheritance with a priority determination of payment of a disponsible balance in the form of personal pension account value of a deceased person to a natural person or a legal entity designated by the agreement on old-age pension savings. If such a person was not established by the saver in case of dead, it is proceed in the following order. The right to receive an amount corresponding to the value of the personal pension account shall acquire the spouse of the deceased, and if there is no spouse, the children of the deceased. If there is no such person the parents of the deceased shall acquire the right to payment of the amount, and if there are no parents, the persons who lived with the deceased for at least one year before his/her death in the same household and who therefore took care for the common household or were reliant on a maintenance by the deceased. Finally, if there is no such person this right becomes a subject to the inheritance according to a civil law. If several persons acquire the right to payment of the amount corresponding to the value of the deceased's personal pension account, each of them has the right to an equal share. A person, who has the right to payment of the stated amount, has the right to request a transfer of a sum of money corresponding to the current value of personal pension account of the deceased (expressed in pension

units) to his/her personal pension account if being a saver.

Sources of funding of the old-age pension savings in accordance with individual funding of this system are only the amounts of contributions to old-age pension savings of savers (with employer´s contributions on behalf of employees), penalties and revenues from investment of assets in the pension fund. A pension unit is share of the assets in the pension fund, whose current value is determined by dividing the net asset value in the pension fund and the number of all pension units recorded on personal retirement accounts of all savers' pension fund. A saver shall be credited a number of pension units, depending on their current value (determined for every working day) for a certain paid amount of the contribution. Before crediting the relevant number of pension units the DSS shall subtract a reward for keeping a personal pension account of the amount of contribution allocated on the account of unassigned payments. The pension units recorded on the personal pension saver´s account represent a saver´s share on pension fund assets. PMC creates four pension funds characterized by a certain type of investment strategy, a bond retirement fund, a mixed pension fund, a share pension fund, an index pension fund managed by the depositary, while the assets of pension funds is separated from the property of PMC. PMC is entitled to a reward for the management of any pension fund and entitled to a reward for evaluation of a pension fund. The saver chooses interests in pension funds, while since 1st April 2012 a rule is introduced that sets an obligation of PMC to have with gradually oncoming age of retirement of a saver progressively increasing percentage of assets in a bond retirement fund. Since that date, the saver has an option to save in the two pension funds at the same time, while one of them must be a bond retirement fund.

The second fund contribution system, the **supplementary pension saving system** is according to a mentioned view defined and voluntary participation contribution system with investment assessment of individualized financial contribution sin the ownership of a participant (with or active participation of the employer in the form of mandatory), administered by a private company for the purpose of acquiring supplementary pension annuity (supplementary retirement pension or supplementary pension for years of service) or in partial fulfillment of non-compliance of contractually anticipated terms. PMC creates at least one contributory supplementary pension fund and a pay pension fund, while the participant can simultaneously be in more contributory supplementary pension funds managed by the supplementary pension company (hereinafter referred to as the "SPC"), with which it has concluded an agreement on participation. Assets in the contributory supplementary pension fund consist of assets acquired from contributions of participants, employers, and revenues from investment of the assets managed by the depositary and related of all supplementary pension funds. Assets in the contributory supplementary pension fund are the common property of the participants. To every participant contract (signed with PMC) is opened a personal account for the registration of amount of supplementary pension units of a participant and for crediting pension units as in the case of old-age pension savings represent the share of the participant or the beneficiary on assets in the supplementary pension fund. Present value of the supplementary pension unit of supplementary pension fund is determined as a quotient of the net asset value in a supplementary pension fund and an amount of all the supplementary pension units registered on the personal accounts of all participants or beneficiaries in the supple-

mentary pension fund. PMC is entitled to a reward for maintaining a personal account, a reward for the evaluation of assets in supplementary pension fund a reward for a severance pay (as one of the benefits of supplementary pension saving) a reward for transfer of a participant to another supplementary pension company if since the conclusion of the participation contract have not expired three years.

Both contributory funded pension systems provide the payout phase of benefits only in residual form, because from organization-executive point of view, the primary purpose is to create the optimum conditions for accumulation and effective utilization of accumulated funds of savers and participants.

Old-age pension savings system and supplementary pension savings belong to a group of fund and contribution-financed systems, i.e. these systems accumulate financial assets in the form of deferred consumption and evaluation in the financial markets (integrated on personal pension saver´s account). An operation and stability of these systems is particularly subject to an economic stability and standard of the country and the number of savers in the system. These systems are only merit because there is a direct correlation between the amount of saved sum and the amount of the pension benefit. This is true even in the case if the saver´s contributory period is organizationally and institutionally separated from the payment period of a saver (the payout phase in the SR will be provided by so-called life insurance companies not before 2015). A substantial disadvantage of these systems is that they do not contain elements of solidarity and thus do not contribute to solving the problem of protection against poverty after reaching the pensionable age or protection against the risk of commencement of a long-term ill health.

6. FAMILY POLICE AND CONTRIBUTIONS OF STATE SOCIAL ASSISTANCE

Support and assistance in starting a family, care and education of minor children is a clearly stated, constitutional-law commitment of the state (Article 41 of the Constitution), and it is, thus, a natural subject of family policy, as the proper functioning of the family - natural and fundamental unit of society, is one of the priorities of each state (contained also in Art. 41, Paragraph 1 of the Constitution of the Slovak Republic "Marriage, parenthood and family are protected by law."). The notion - family is also included in the Art. 10 of the International Covenant on Economic, Social and Cultural Rights (New York, 1966), which emphasizes the need to provide the widest possible "protection and assistance to the family, which is the natural and fundamental unit of the society, particularly for its establishment and during the period when it is responsible for care and education of minor children. ". Finally, in the Art. 41 Paragraph 4 the Constitution also emphasizes the right of parents to care for children and their education, and simultaneously, children's right to parental care and upbringing.

Family is one of the greatest values of the society. It is the first place where the child learns to love, honour and respect and it is a natural form of socialization. Within the family it is the first time, when children recognise their human dignity. Family keeps society together, it allows life to future generations, and in turn, society is responsible for the care of its members, especially for the care of those who are unable to provide for themselves. It performs biological-reproductive function, but also educational, social and economic function. Within each family there exists its own cultural, spiritual and economic environment.

Family is a bio-social system meeting the needs and requirements of both - its members and also the society. Family is also the basic reproductive unit of society, which significantly affects society and its functioning. However, there is not one exact definition of family. In the Slovak Republic the family is viewed as a married couple of man and woman, and their own or adopted children - all living in the same household.

Family is a constantly developing institution that affects a number of factors taking place in society. It is mainly influenced by the socio-economic and demographic factors. Within these socio-economic factors there outstands the most clearly the issue of reconciling work and family life (especially for women), viability on the labour market and housing options. Among the demographic factors affecting family policy we include the population size and its structure, declining of the birth rates, an aging population and an increase in migration. Finally, an important factor is the significantly changing behaviour of families manifesting a change in family structure (increasing the number of children born out of wedlock) and in forms of cohabitation (decrease of number of marriages, while there is an increase of divorces). The transition from a

closed to an open family system, abandonment of the concept of the nuclear family and the weakening of the basic functions of the family are particularly noticeable.

Family policy is defined by the social security law as a system of general rules, measures and instruments by which the state directly or indirectly supports the paramount importance of families for the development of every person and for the whole society and it expresses support for it.[69] It is implemented not only at the state level, but also at the regional (and local) and municipal level through measures of self-governing bodies, i.e., in collaboration with various organizations, governmental institutions and the ecclesial communities, but also with individual citizens, and there is particularly manifested the principle of solidarity and subsidiarity. "[70]

Family policy is a very specific area of state social policy, because almost all social policy measures have a certain impact on the life of a family member. Currently, one of the important issues of concern of this policy are the declining birth rates, high divorce rate and even rejection of marriage and creation of partnerships or of single-parent families (one of the main reasons is, among other things, a high degree of individual freedom).

Family policy manifests itself as a set of state interventions in the form of services for families with young children, parental leave, provisions in the tax sector and financial transfers that help parents to return to the labour market, and other different strategies for flexibility of work.

6.1. Objectives of the Family Policy

Not each state has specifically defined the concept of family policy. If the state creates such a specific concept in relation to the family, it directs it into **the four target areas**:

- into the demographic development, targeted at increasing the birth rate,
- into the social objectives, which are aimed at redistributing of resources,
- into the economic objectives that are focused on employment (especially of women),
- into the objectives of civil rights in the form of creating gender equality in different spheres of society.[71]

In developing strategies to family policy, the mentioned target areas are linking on a synergic basis (for example by extending the employability of women and increasing their level of social security during pregnancy and motherhood there can be influenced the future birth rate of the population).

The basic objectives of family policy are identified as:

1. democratization, autonomy and independence of the family,

---

[69] Macková, Z.: Právo sociálneho zabezpečenia. Osobitná časť: Štátne sociálne dávky s príkladmi. 1. vyd. Heuréka, Šamorín, 2008, 144 s., ISBN 978- 80- 89122- 52- 3. s. 11.

[70] MACKOVÁ, Z. a kol.: Základy práva sociálneho zabezpečenia. Bratislava : Prosperity, 2001. 300 s. ISBN 80-968219-3-8. s. 233.

[71] Bodnárová, B. a kol.: Východiská a výzvy pre vypracovanie štátnej rodinnej politiky. (Záverečná výskumná správa). Inštitút pre výskum práce a rodiny. 2010. s. 5.
Zdroj: http://www.sspr.gov.sk/IVPR/images/IVPR/vyskum/2009/Bodnarova/Bodnarova-spol.pdf

2. intensification of support for families with children through shared responsibility of individual, family and the state and of other entities (municipalities, religious communities, employers and NGOs),
3. activities to prevent poverty in families and their subsequent exclusion.

Creation of family policy is affected mainly by demographic development, socio-economic environment, as well as by obligations under international documents and under the European Union Law.

6.2. The Conception of the State Family Policy of the Slovak Republic

Current concept of the State Family Policy responds to the call of the UN General Assembly in 2004 to the Member States to direct an intense attention on the family, their problems and needs.

The concept of the state family policy adopted by the Government (Resolution no. 389) on 4 June 1996[72] replaced the until-then population policy and it included the country among countries with the so-called **explicit family policy**, which object is the family as a whole. Unlike explicit family policy, the implicit family policy focuses mainly on the rights of individual family members.[73]

The basic **strategic objectives of the state family policy** include:

- achieving relative economic independence of families as the basis of their civic independence and the appliance of their responsibilities and choice for their own future,
- success of families in the performance of their functions,
- stability and social quality of marital and parental relationships within the meaning of equality and social division of family roles,
- creation of optimal conditions for the self-reproduction of society,
- adoption of such measures, which will enable consistent application of the principle of choice, respectively, of compatibility when deciding a parent for parental leave.

The concept also defines **new current long term objectives** such as:

- handle the demographic challenge of an aging population,
- provide a basis for long-term competitiveness through the development of human resources and
- reducing the risk of poverty for families.[74]

[72] It was amended and updated in 2004.

[73] Macková, Z. – Barinková, M.: Postavenie a úloha rodiny pri zabezpečovaní starostlivosti o rodinných príslušníkov. In.: Moderné trendy sociálneho zabezpečenia (Materiály z vedeckej konferencie konanej v dňoch 23.-24. októbra 2008). SAP Bratislava 2008. ISBN 978-80-8095-040-8. s. 49.

[74] Section no. 1 - Concept of State Family Policy.
Source: http://www.esf.gov.sk/esf/index.php?SMC=1&id=192

6.3. Principles of the Family Policy

The basic prerequisite of the (state) family policy, of its conceptual development and ultimately of the real fulfilment through the achievement of its objectives is a consistent determination of the main theses of thought expressing social values, a set of possible instruments and measures and efforts towards achieving the determined objectives.

The concept of the State Family Policy sets out the **following principles**:

- Shared responsibility - it means meeting the needs of family members within self-sufficiency, independence and freedom of choice in dealing with (bad) life situations in the family,
- Subsidiarity - is reflected in the decentralization and transfer of responsibilities from the state to entities at lower levels, which can effectively and flexibly respond to the needs of families,
- Directness and effectiveness - in conjunction with other instruments of family policy reflects efforts to make its use effective and efficient,
- Solidarity and merit - means the participation of the society in addressing the adverse social situation of the individual, while the principle of merit measures the direct contribution of the individual to the society,
- Gender equality - its application provides support to reconciling work and family life,
- Equal treatment of parents, regardless of legal status – it means to avoid favouring some form of family at the expense of other forms of family (unconditional by the conclusion of marriage);
- Coordination and harmonization – represents the condition of more consistent factual and institutional coordination and harmonization of policies related to family policy in the implementation of measures to encourage families to fulfil their functions at horizontal and also vertical level,
- Balance and flexibility – represents the efforts to balance family assistance at various stages of the family life cycle, allowing a choice of the type of assistance (direct or indirect) in adverse life situations. Flexibility also means the rule for the avoidance of the negative effect of one social protection system in the choice of assistance from another system,
- Openness and receptiveness to change - means that the actual experiences gained through monitoring and analysis of the socio-economic conditions of family lives, and of demographic and behavioural aspects of families must be transferred by relevant bodies responsible for the design and implementation of family policy to the design of new measures changing, supplementing and correcting the approach of the society and its support of families.

6.4. Principles of Implementation of the Family Policy

Family is facing many socio - economic changes. These changes are the result of on-going implementation and introduction of smaller or larger reforms which have direct impact on the family and its members. In Slovakia, the state focuses primarily on

the areas of policies which are related to family policy, and which are likely to weaken the position of family and thus require the most extensive support from the part of the society. Among such potentially threatened areas we include enhancement of access to education, access to housing, reconciliation of work and family life, family legal protection and assistance to families in crisis situations, as well as measures to help families with the need to care for a family member due to age or unfavourable health state.

Among the principles of implementation of family policy belong especially:

- Feasibility and timeliness of program goals - each implementation of program or conception, including the concept of state family policy, requires clearly defined basis for the feasibility which meets the requirements of timeliness, longevity, value openness (representation of differentiated interests of different types of families) and society-wide acceptance,
- Unifying process (or the principle of reconciliation) - realization of the concept of state family policy must not omit linking of particular policies with the aim to strengthen the achievement of those objectives,
- Specificity – in the application of concrete tools and measures of family policy there should be taken into account the specific aspects and needs of families (i.e., do not apply the widely focused measures)
- Interaction (or close cooperation) - co-ordinated action by particular actors (churches and cultural institutions, and a variety of civic and interest groups and foundations, and other entities) to achieve goals at all levels of family policy (local, regional and national)
- Feedback – expresses the principles of openness and receptiveness to change, directness and effectiveness of tools and measures. Moreover, it expresses functioning information linking between the management and the executive bodies of family policy and ultimately creates a barrier to the possible negative effects of applied instruments and measures to the needs of a family life. In this context, it is also a means for finding new directions of family policy.

Finally, among the tools and measures by which we achieve the objectives of family policy, we include especially:

- law and its expression in the legal provisions,
- economic instruments,
- social programmes characterized by targeting,
- Collective bargaining.[75]

6.5. Definition of system of state social assistance

System of the social support represents the most important tool for the implementation of state family policy. The benefits of this system are direct financial contributions, by which the state participates in the recovery of the costs related to nutrition, education and child care, covered by the family members (especially parents). In terms of participation and financing by the state, this system of social protection is a regulated non-contributory redistributive system. In the system there mainly dominates

[75] Moreover, Macková, Z. a kol.: Základy práva sociálneho zabezpečenia. Bratislava : Prosperity, 2001. 300 s. ISBN 80-968219-3-8. s. 14-15.

society-wide solidarity, which is, in terms of content, filled with social events such as the birth of a child (or the arrival of a dependent child in the family), care for a dependent child (provision of his/her education, nutrition, housing and formation), care for an impaired child, taking a child into one of the alternative form of the (family) care and death of a family member.

The system consists of a number of contributions, which legal-technical legislation is scattered in various laws. Anchoring the personal scope of the system is very similar in the individual contributions, despite the fact that contributions are made independently, and are usually not interconnected to provide another contribution. In the position of the authorized person is the child's mother, one of the parents or a natural person who has taken a child into substitute (parental) care. Material scope of the system consists of individual contributions, which characteristics are mentioned below. The sum total of the state social assistance contributions is provided for as a constant sum, and their provision is not subject to income testing of the applicants for the contribution. Increase of the value of state social support is derived from both - the coefficient by which increases the subsistence minimum annually on 1st July (with effect from 1st January of the respective year) and from the facultative policy decision of the Slovak Government (in the case of contribution to child care, childbirth, bonus to childbirth contribution and bonus for parents to whom three or more children are simultaneously born or to whom are born twins or more children at the same time twice within two years). In the system, in terms of the provision of the respective contributions, there plays an important role the information obligation of the authorized person who informs the payer of the contribution about the facts which have a decisive influence on the entitlement and payment of contributions (written information within eight days).

6.5.1. Childbirth contribution, bonus to childbirth contribution for parents who have more children born at once[76]

Childbirth contribution is a single state social benefit, by which the state contributes to cover the expenses associated with the provision of the necessary needs of the new-born.

Authorized person to be entitled to the childbirth benefit is:

a) the mother who gave birth to a child,
b) the child's father, if:
- the child's mother has died or
- the child's mother is declared as a missing person or
- the child younger than one year has been entrusted to the care of his/her father (by the court decision)

c) a person who took care for the child to substitute for parental care by a final court decision (i.e. personal care of another natural person, foster and institutional care).

[76] Regulated by law no. 235/1998 Coll. on childbirth contribution, contribution for parents to whom were born simultaneously three or more children or to whom were born within two years twins twice and amending other laws.

Contribution scheme of the childbirth contribution requires compliance with the conditions for entitlement to the contribution:

- childbirth and
- permanent residence in the Slovak Republic

In the case of a multiple birth, the authorized person is entitled to the contribution for each child. Entitlement to the contribution for the same child occurs only once.

Entitlement for the childbirth contribution does not **arise to the authorized person** if:

- before claiming the entitlement for the contribution the authorized person gave permission for adoption of a child or
- the child is placed in foster care or there was ordered that the child be placed in the institutional care (e.g. in social or health care facility) or
- the mother after childbirth left the child in the hospital without the consent of the physician
- the child is born abroad and the state institution in which the child was born paid the contribution of the same kind to the beneficiary. **If the child was born in a country which** is not an **EU Member State or contracting party to the EEA Agreement**, the mother is entitled to the childbirth contribution only if before the childbirth she had the health insurance in Slovakia for at least 12 consecutive calendar months.

The sum of the childbirth contribution is of € 151.37 per child. If there were born two children simultaneously (or more children), while at least two of them survived at least 28 days, the amount of the contribution increases of about half the original amount, i.e. the sum is of € 227.07.

Bonus to childbirth contribution (hereinafter only "bonus") is a single state social benefit, by which the authorized person is compensated the increased costs associated with the provision of the necessary needs of the child, who the mother gave birth as her first child, second child or third child and that survived at least 28 days.

Authorized person to claim the bonus is:

a) mother who gave birth to her first, second or third child, who survived at least 28 days
b) the child's father, if: 1. the child's mother died, 2. the child's mother was declared missing or 3. if a child who survived at least 28 days, has been entrusted to the care of his father by the court decision.

Contribution scheme of the bonus to the childbirth contribution **requires fulfilling the following conditions:**

- Entitlement to childbirth contribution of the authorized person and
- Birth of the first, second or third child who survived at least 28 calendar days.

Entitlement to a bonus to childbirth contribution does not **arise to the authorized person** if:

- she is a minor mother without parental rights and responsibilities,
- from 4th month of her pregnancy she did not participate for preventative examinations with a doctor once a month (in gynaecology and obstetrics) or for similar examinations abroad,
- within the birth of her second child (2nd birth) or third child (3rd birth) the child born in a previous birth is entrusted in a court-ordered institutional care or in a

protective care, or s/he has been adopted, or has been entrusted in one of the forms of alternative care, or has been placed in a personal care of his/her legal guardian.

If the mother **gives birth to more than one child at the same time**, there arises a bonus to childbirth contribution for each child who survived at least 28 days. Amount of the bonus to childbirth contribution is 678.49 €.

Contribution for parents to whom there were born simultaneously three or more children or to who within two years there were born twins twice or more children at the same time (hereinafter only the "contribution for parents") is a state social contribution, repeated once a year, that compensates beneficiaries' increased costs incurred in connection with the care of more children.

The person entitled to claim the contribution for parents is:

a) a parent of children (*if the parents are unable to agree on who makes a claim for contribution for parents, the mother of children has the preferential right for this contribution*) or
b) a person who took the children in foster (parental) care by a court decision.

Contribution scheme of the contribution for parents requires **fulfilling the following conditions:**

- at least three of the children are under the age of 15 years (in the situation of twins or more children born at the same time within two years, there is followed the age limit of the children who were born as first),
- care for children by the authorized person and
- permanent residence of the children and of the authorized person in Slovakia.

Entitlement to contribution for parents **does not arise** for the authorized person, if the child is provided with care in the social (re-socialization) facilities throughout the whole calendar year due to the performance of institutional care or court-ordered protective care.

The amount of the contribution for parents per child is graded according to the age of the child:

a) up to 6 years of age the sum is of 81.99 €,
b) within 6-15 years of age the sum is of 101.25 €,
c) at the age 15 the sum is of 107.55 €.

Contribution for parents is provided for each child annually in the respective calendar year.

6.5.2. Parental contribution [77]

This contribution is a regularly repeated state social benefit, which aim is to help parents to ensure proper care of the child 1. up to three years of age, 2. with long-term unfavourable health condition within six years of age or 3. up to six years of age, for a child who is placed in foster (parental) care for 3 years from the court decision on his/

[77] Provision of this contribution is regulated by the Law no. 571/2009 Coll. on parental contribution

her entrustment.

Authorized person to claim parental contribution is:

a) the child's parent,
b) the person to whom the child is placed in one of the forms of alternative care except institutional care and custody or
c) the spouse of the child's parent, if s/he lives with the child's parent in the household.

Authorized person can only be one parent, even if there are more children in the family who meet the characters of the child for the purposes of providing parental contribution.

Contribution scheme of the parental contribution requires from the beneficiary **fulfilling the following conditions**:

- Proper care of an authorized person at least for one child (who is defined above), and if there are more authorized persons who care for the child, only one of them is entitled to the contribution under the agreement [78] and
- Permanent or temporary residence of the beneficiary in the Slovak Republic, including a permanent or temporary residence of the child in Slovakia.

Proper care of the child is personal care provided to the child in the interests of his/her physical and mental development, which ensures particularly adequate nutrition, hygiene and compliance with preventive examinations[79] or treatment provided by another adult natural person or legal person.

Entitlement to parental contribution **does not arise if**:

- The authorized person and the child are residing outside the territory of the Member States of the EU or EEA and Switzerland, and at the same time the authorized person does not have health insurance in Slovakia,
- The beneficiary is entitled to maternity benefit (or has a claim for similar benefit from abroad), which amount is higher than the amount of parental contribution granted under national law,
- Country outside of the EU or EEA and Switzerland, provides to the beneficiary parental contribution or maternity benefit, or some other, similar benefit.

Amount of parental contribution is of 199.60 € per month. Amount of parental contribution is increased by 25% for each child born at the same birth under condition that there is ensured the care of the child by the authorized person.

Amount of parental contribution is provided **at half the amount** if the beneficiary does not care for at least three consecutive months of proper implementation of compulsory education of another child in her/his care (the decreased amount of the parental contribution is provided at least three consecutive calendar months from the first day of the calendar month following the month in which the school announced this fact to the competent Office of Labour, Social Affairs and Family.

If for a full calendar month there is paid to the beneficiary maternity benefit or similar benefit in the amount of less than the amount of parental contribution, then

[78] This also applies in the case of the court-ordered alternating child care by both parents.

[79] Preventive examinations and their frequency are enshrined in Law no. 577/2004 Coll. on range of health care covered by public health insurance, and payments for services related to the provision of health care.

the parental contribution during this period is paid in an amount determined as the difference between the amount of parental contribution and the amount of maternity or similar benefit.

The amount of parental contribution is subject to periodic increases by 1st January of the calendar year (the product of the coefficient, by which increased the amount of subsistence minimum to 1st July of the calendar year).

6.5.3. Contribution to child care [80]

The recurring social benefit was created as an alternative to a natural person who is not entitled to parental contribution by reason of employment or study at university or college. The purpose of the contribution is based on the suggested approach, i.e. to contribute to the entitled person to cover costs incurred for child care (up to the age of three or up to six years of age with long-term unfavourable health condition).

The person entitled to claim the contribution for child care is:

a) a parent or
b) a natural person to whom the child is placed in substitute (parental) care by a court decision.

If there are more entitled persons, the contribution to the care for the same child can be claimed only by one of them. Contribution to child care is provided to the entitled person **for each child** who meets the above mentioned age condition.

Contribution scheme of the contribution to child care consists of the following conditions:

- performance of paid employment[81], full-time study in high school or at university by the authorized person,
- providing care of the child by the provider in Slovakia and
- permanent or temporary residence of the child and the authorized person in Slovakia

Environment, in which the care for child is performed, is usually subject to category of provider of child care, which is:

- Pre-school facilities (kindergarten, nursery, nursery center) or
- Other legal entity that provides child care (ie, private facility) or
- A natural person who provides professional child care under a trade license or
- A natural person who is not paid a parental contribution (e.g. family member) or
- A parent who performs a paid work and does not ensure the above mentioned forms of child-care.

The right to contribution does not arise when one of the beneficiaries (or spouse of the beneficiary) is provided a maternity benefit or a similar benefit abroad also after 6th week from the date of birth of the child or is paid parental benefit or a

[80] The contribution is regulated by Law no. 561/2008 Coll. on the allowance for child care and on amendments to certain laws.

[81] As performance of employment is also considered to receive maternity allowance, including receiving similar benefits from abroad no longer than until 6th week from the date of birth of the child.

similar benefit abroad.

Claim for contribution for a particular child does not arise also if one parent is entitled to maternity benefit (for this child) from a foreign country or one of the parents is paid a contribution to services for families with children, which is part of the system of measures for education and training for labour market . Contribution is not paid either for a calendar month for which s/he was already paid parental allowance.

Amount of the child care benefit depends on the amount of documented expenses incurred for care (evidence of financial payment to the care provider), up to the amount of 230 € per month. If the care-provider is the parent himself/herself or natural person to whom the parental allowance is not paid, the amount of parental contribution to childcare is of 41.10 € per month.

6.5.4. Child allowance and bonus to child allowance[82]

Child allowance is recurring (state) social benefit, which aims to contribute to the entitled person in education and nutrition of a dependent child.

Authorized person to claim the child allowance is:

a) a parent of a dependent child,
b) a natural person to whom a dependent child is entrusted in one of the forms of foster care by a court decision,
c) adult dependent child:

1. if on his/her side there are no parents (eg parents died)
2. if he/she has the maintenance obligation entrusted by his/her parents
3. concluded a marriage or
4. whose marriage ended.

If there are several persons who meet the conditions for the position of the authorized person to claim the child allowance, the same child allowance can be paid only to one of them (prohibition of double payment of benefits).

A specific receiver has the same status as the authorized person. **Institute of the special receiver** is applied in situations where the beneficiary does not use child allowance in accordance with the above mentioned statutory purpose or if a child neglects proper implementation of compulsory education. In this case, the specific recipient is determined by the contribution payer via suggesting another authorized person or social facility (especially children's home or re-socialization centre), in which the child is placed. In the case of non-compliance with the compulsory education by the dependent child, the child allowance is paid by the payer especially to the municipality where the child has a permanent or temporary residence or to the social facility in which the dependent child is placed, or any other natural person. The resumption of the payment of child benefit to the beneficiary can proceed normally after three consecutive months of the establishment of special recipient. The payer of the child allowance is obliged to stop payment of this allowance also on the basis of court order to stop the payment of a special allowance as it is a special measure for enforcement

[82] These benefits are governed by Act no. 600/2003 Coll. on child benefit and on amending Act. 461/2003 Coll. on Social Insurance.

of court decision on education of minor children.

Contribution scheme of the contribution to child care includes the following conditions:

- Authorized person cares for a dependent child (condition shall not be satisfied if the child is ordered to foster care or protective care by judicial decision) and
- Permanent or temporary residence of the beneficiary and dependent child in Slovakia.

In this context, it is necessary to clarify the concept of a dependent child which has its differences from the definition for the purposes of the social security system (especially in the provision of disability pension and orphan's pension). **Dependent child is a child who:**

- Performs the compulsory schooling,
- after completing compulsory schooling is involved on a full-time basis in course of primary education, but no longer than until the end of the school year in which they **reach 18 years of age**
- Constantly prepares for a profession by studying secondary school or university on a full-time basis[83], but no longer than until **they reach 25 years of age,**
- Is unable to consistently prepare for a profession or gainful activity because of illness or injury, but no longer than until reaching 25 years of age,
- Is unable to consistently prepare for a profession or perform a gainful employment due to an unfavourable long-term health condition[84], but no longer than until they reach adulthood.

As a dependent child is not considered a child who:

- Received master's degree (usually the title of "Master" or "Engineer") or
- Is disability pension recipient regardless of the percentage decrease in capacity of performing a paid work or
- Exceeded the standard length of university studies (which is enshrined in the relevant university study program).

Systematic preparation of the child for the profession means not only the study itself but also the period:

a) that immediately follows the completion of the study in secondary school, but not longer than before the end of the school year in which the child ended up studying in secondary school,
b) by the end of the school year in which the child ended up studying in secondary school, until the registration in university made no later than on October of the current year in which the child ended up studying in secondary school,
c) after the last year of secondary school until the completion of examination, but

[83] As continued, systematic preparation is not considered a part-time study, part-time courses or subjects of study or suspension of study (however, grade repetition is an exception). Continued systematic preparation must be performed by the child continuously, e.g. between periods of graduation and entry to further study there cannot be non-study period except for the period resulting from the organization of the school and academic year..

[84] Long-term adverse health condition is a condition (disease), which according to medical knowledge is to last or lasts longer than one year and requires special care. Disease and adverse health condition are contained in Act no. 461/2003 Coll.

no longer than until the end of the school year in which the study should be completed (ie, until August of the respective year),

d) after the graduation from the first degree, and according to the study program s/he did not exceed the standard length, until the registration to the university courses of second degree made no later than on October of the current year in which the child finished first degree of university studies (i.e., continuous transition from Bachelor to Master study).

Systematic preparation of the child for the profession under this Act is also other education or training if considering their range and level under the decision of the Ministry of Education of the Slovak Republic they are based on the level of schools anticipated by law and multiple years of study (within the standard length of study).

As a s**ystematic preparation of the child for the profession is not considered the period:**

a) between the end of secondary school studies and entry into first degree of university study in the same year if the child during this period performs a gainful activity, except of the Student Employment Agreement, Agreement for Performance of Work (employment) or if the child was included in the register of job seekers (in the employment services)
b) when learning was interrupted.

Amount of the child benefit is € 23.10 per month for each dependent child.

In the case of **bonus to child benefit**, the benefit purposes are based on financial compensation regular back-pay to the entitled person, who in the tax system **may not claim tax bonus for a dependent child.** The tax bonus[85] represents the amount by which the taxpayer's income tax is reduced, and it is for each dependent child who lives with him/her in the household (tax bonus is € 21.02 per month). We can assume from the nature of the purpose of the tax bonus that the claim for the tax bonus does not arise for economically inactive person and taxpayer whose taxable income for the calendar (tax) year did not achieve less than 6 - times the minimum wage.

Authorized person to claim the bonus to child benefit is:

a) a parent of a dependent child,
b) a natural person to whom the dependent child is placed in substitute (parental) care by the court decision,

For the provision of a bonus to child benefit there is also applied the institute of special recipient.

The **benefit scheme** of the bonus to child benefit includes the following conditions:

- Compliance with the conditions of entitlement to child benefit,
- Provision of a retirement pension, early retirement pension, disability pension due to the decrease of earning capacity by more than 70% (including the receipt of a pension of the same kind from abroad or retirement pension) for the authorized person, including another natural person who may claim tax bonus,
- Failure to perform paid employment by the authorized person, including another natural person who may claim tax bonus
- Denial of tax bonus for a dependent child of the beneficiary who has the right

[85] Legislation on tax bonus is contained in the Act no. 595/2003 Coll. on Income Tax.

to apply for child benefit

Amount of the bonus to child benefit is € 10.83 per month.

In the case of child benefit and the bonus to child benefit there is applied mandatory mechanism for their increasing. On 1st January of the calendar year the amounts of both contributions are adjusted by a coefficient, which modified the subsistence minimum of 1st July of the previous calendar year (January 1, 2013 it will be increased by 2.5%).

6.5.5. Contributions to the foster care of a child [86]

Common features of contributions to foster care are the care performed by natural person other than a parent and the care provided in one of the forms of alternative care, which is governed by the Family Law (Law no. 36/2005 Coll.). **The forms of foster care,** which contributions are provided for (except for institutional care) **include:**

- Substitute personal care, i.e. custody of a minor child in the care of natural person other than the parent. This form of care also includes the case of custody to another person who submitted a proposal for custody of the child to the court,
- Guardianship if the guardian performs personal care of the child (with the exception of guardianship, which is reasoned by the age of parents - minor parent or minor parents)
- Foster care, including temporary custody of a person who is interested in becoming a foster parent. This form of care also includes the case of custody to another person who submitted a proposal for foster care of the child to the court,

Increasing the individual contributions to foster care is subject to compulsory indexation mechanism effective on 1st September of the calendar year (total amount of contributions is adjusted by a coefficient regulating the subsistence level for 1st July of the calendar year).

1. **Single payment for the child in placement in alternative form of care** is designed to support the basic personal equipment (needs) of the child (mainly clothing, footwear, toiletries, essential furniture and other things).

Authorized person is a minor child placed in foster care (in an action for a claim for single payment s/he is represented by foster parent).

Allowance scheme of the single payment requires demonstration of all following facts:

- Placement of the child in foster care (in personal care, foster care and guardianship)
- Personal care of the substitute parent for the child
- The child was immediately before custody in institutional care or was placed in protective care.

After free (optional) considering of the contribution payer, it is possible to provide contribution even if the third condition of the allowance scheme is not met. It is the situation when in the beginning of the foster care a minor child does not have basic

[86] Legislation on contributions to the foster care of the child is enshrined in Law no. 627/2005 Coll. on Contributions to support the foster care of the child.

personal equipment (needs).

Amount of the single payment for the child in placement in alternative form of care is € 361.68.

2. **Single payment to child upon termination of foster care**

This contribution is designed to promote the independence of the child. Authorized person is a child placed in foster care.

Allowance scheme of the payment requires from the beneficiary to demonstrate the following:

- The existence of the corresponding alternative form of care and it is the entering of the child in custody, guardianship or foster care,
- The duration of the corresponding form of alternative care as minimal within one year before the child reaches adulthood.

The amount of single payment to child upon termination of foster care is € 905.99.

3. **Repeated allowance for a child (placed in foster care)**

The allowance is designed to support the needs of the child, mainly to cover the costs of food, education, housing and schooling of the child.

Authorized person is:

- Dependent child placed in foster care,
- Adult dependent child.

Allowance scheme of the repeated allowance includes demonstration of:

- entering of a child in foster care
- Dependence of a child considered under the criteria mentioned in the provision of child benefit; including an adult dependent child, who, after reaching the age of majority is living in the same household with their substitute parents,
- Lack of income of a child or income of a child[87], which is lower than the amount of the repeated allowance for a child. Income of (an adult) dependent child is determined for each month for which there is provided the regular allowance.

The amount of the regular allowance is € 135.69. In the case of a dependent child's income it is the difference between the amount of income of (an adult) dependent child and the regular allowance. If the proceedings on alimony payments or on orphan's pension or proceedings on allowance for the survivor in case of accident, or on similar benefit abroad have been started, the competent payer (i.e. the Office of Labour, Social Affairs and Family) can provide regular allowance also in advance.

4. **Regular allowance for foster parents** is designed to support the implementation of the custody of a child who is entrusted to foster parents.

The authorized person is a substitute parent, respectively, one of the spouses who have custody.

Allowance scheme includes the following conditions for the granting of regular allowance for foster parents:

- Custody of the child in foster care, guardianship or temporary custody of the

[87] As income for the purposes of providing repeated contribution shall be considered an orphan's pension, alimony provided by parents, allowance for the survivor in case of accident or similar benefit provided from abroad. For an adult dependent child i tis also a taxable earned income. Minimum amount of alimony is provided for by Family Act and it is 30% of the subsistence minimum for a dependent child, i.e. from 1st July 2009 it is € 25.35.

person is interested to be the child's guardian[88],
- Personal care for entrusted child,
- The substitute parent does not perform alternative care in foster care facilities, and
- Permanent residence of the substitute parent in Slovakia.

The foster parent **is not entitled** to regular contribution if:
- He or his spouse is entitled to maternity or sick pay (including the same kind from abroad) or
- He or his spouse is entitled to parental allowance or
- Child placed in foster care is his/her relatives in a direct line.

The amount of regular allowance for foster parents is € 172.52 per month. The amount of the regular allowance increases by € 122.71 per month, if the substitute parent cares personally of at least three children who are siblings. The increased amount of € 122.71 will also be provided to the foster parent, who is not entitled to regular allowance due to the fact that s/he is receipt of the above mentioned benefits, but only if s/he takes care of at least three children who are siblings.

5. **Special repeated allowance for foster parents** is designed to support the implementation of personal care for a child placed in foster care, who is considered as an individual with a severe disability.

The authorized person is a substitute parent, respectively, one of the spouses, who have custody.

Allowance scheme of the special repeated allowance requires for the payment to demonstrate the following:
- entering of a child in foster care and
- Personal care for a child with a severe disability (*this type of disability is defined in the system of social assistance)* and
- Permanent residence in Slovakia.

The foster parent **is not entitled** to the grant of special repeated allowance if:
- Substitute parent receives a child care cash for care of this child or
- Substitute parent provides a child care service or
- Child receives a cash allowance for personal assistance.

Amount of the special repeated allowance for foster parent is € 71.09 per month for each entrusted child with severe disability.

6.5.6. Funeral grant[89]

Funeral grant is the last of the state social benefits within financial support for families, by which **the state contributes once to cover the costs associated with the provision of funeral.** This benefit is a specific contribution as opposed to the statutory common purpose (and in a broader sense) of other state social benefits.

[88] By repeated contribution to foster parents there is not supported substitute personal care, as its use is generally linked to the relatives of the child, to whom the maintenance obligation (among the relatives) results from the Family Act.

[89] Legislation on funeral grant is enshrined in Law no. 238/1998 Coll..

Authorized person is an adult individual who arranges the funeral of the deceased:

Contribution scheme of the funeral grant is based on the proof of fulfilment of requirements:

- provision of funeral by the authorized person,
- permanent or temporary residence of the beneficiary in the territory of Slovakia,
- permanent residence of the deceased at the time of death in Slovakia or temporary residence of the deceased at the time of death in the Slovak Republic and its burial in Slovakia, as at the time of his/her death, s/he had a temporary residence in Slovakia.

The authorized person claims contribution from a competent payer of the contribution (Office of Labour, Social Affairs and Family) according to the place of last permanent or temporary residence of the deceased. Application of an authorized person for the grant is confirmed by a funeral service, which provided the funeral and by the Office of Labour, Social Affairs and Family of the place of death.

Amount of the funeral grant is 79.67 €. This amount can be increased from 1st September by the Slovak Government Regulation.

7. SOCIAL ASSISTANCE SYSTEM – BENEFITS AND SOCIAL SERVICES, WHICH PROVIDE BASIC LIVING STANDARDS

Social assistance is the third pillar of Slovakia's social security system. The **primary purpose** of this pillar is to prevent social exclusion of individuals (and their family members), i.e. to protect individuals from unfavourable situations in life that are incompatible with their right to protection of human dignity and, at the same time, to create conditions for their social inclusion, with their active participation and by means of a suitable system of instruments and measures.

This system is also called the system of last social resort, which is reflected in the aspect of subsidiarity of social assistance – the system is not employed until all means available to the individual and his community to overcome the unfavourable social situation have been exhausted. The aspect of subsidiarity of social assistance is identified in relation with the level provided benefits and social services, which are designed to ensure that the person in unfavorable social situation should have only basic and essential living conditions.

The social assistance system is aimed to eliminate the material hardship of the individual and to reduce (eliminate) the unfavorable social situation by granting of targeted monetary contributions and social services. Type, form and intensity of contributions and social services are determined by the nature unfavorable social situation.

Unfavorable social situation (potentially) causing social exclusion is the result of:

- lack of basic conditions for satisfying basic living conditions

(this is also the subject of material hardship)

- living habits and lifestyle of the individual,
- severe Health disability,
- reaching retirement age,
- caring a person with severe disabilities,
- behavior of others (especially domestic violence);
- that the person is a victim of trafficking.

Determination of the range of social services, contributions and their application is the result of a two-level assessment activity. Assessment activity (including the assessment of levels income and property of the individual who is in an unfavorable social situation), represents the principle of individualization and selectiveness in relation to the provision of benefits and social services. Assessment of material hardship is built in part differently: by providing of eligible contributions that are associated with a certain aspect of the provision of basic living conditions. The unifying common result of providing monetary contributions and services of the social assistance system is: to

ensure the basic conditions of the individual, to support his ability to integrate into society (active participation of the individual in society), to ensure living and social needs and to learn how solve problems alone.

7.1. Basic living standards, which are provided through minimum subsistence benefits

Material hardship is a situation when the income of an individual (a person) and persons jointly assessed with this individual falls below the minimum subsistence level and the individual and the said persons are unable to earn or increase their income through their own effort. The minimum subsistence level is the recognised minimum level of income of a natural person after deducting the amount of income tax and statutory insurance contributions, i.e. the individual's net income. The minimum subsistence level is set for an adult natural person (€194.58), the so-called jointly assessed persons (€135.74) and for dependent children[90] and children who are no longer dependent (€88.82). These minimum subsistence levels are adjusted every year on 1 July in accordance with the growth in per-capita net income or growth of the cost of living in the monitored group of households in the reference period. The reference period considered to evaluate the growth in net income is the first quarter of the preceding and current calendar year. The reference period considered to evaluate the growth of the cost of living in the monitored group of households is the period between April of the preceding year and the end of March of the current year. The decisive figure is the smaller increase as reported by the Statistical Office.

The object of legal relationships in the area of material hardship is providing minimum subsistence benefit and allowances to the minimum subsistence benefit, purpose of which is to ensure basic living standards and assist an individual and persons jointly assessed with this individual, with their active participation (own effort and own income), in dealing with their material hardship.

The process of assessment of material hardship consists of two steps. In the first step, the income of the individual and persons jointly assessed with this individual is tested for the purposes of assessment of material hardship. This includes the opportunities for obtaining income through their own effort (see the definition above). In the second step, if the individual and the jointly assessed persons are found to be in material hardship, the amount of the minimum subsistence benefit and entitlements to the specific allowances are determined.

The income of the individual and persons jointly assessed with this individual is the total net income of persons included in one of the five "**groups of assessed persons**":

Group 1: the assessed individual and his or her spouse,

Group 2: the assessed individual, his or her spouse, dependent children[91] living in the same household and children below 25 years of age (no longer dependent) living in the same household, whose income does not exceed the amount of the minimum

[90] The dependency status of a child is assessed using the same criteria as those defined for the child allowance.

[91] The dependency status of a child is assessed using the same criteria as those used for granting the child allowance.

wage (with the exception of children entitled to unemployment benefits or the receipt of disability pension),

Group 3: the assessed parents and their dependent children living in the same household and children below 25 years of age (no longer dependent) living in the same household, whose income does not exceed the amount of minimum wage (with the exception of children entitled to unemployment benefits or the receipt of disability pension),

Group 4: the assessed parents who themselves are dependent children, another person receiving benefits related to these parents (e.g. child allowances) and dependent children living in the same household,

Group 5: the assessed dependent child living in the same household with another person – the income of the dependent child and benefits received by the person in connection with the dependent child are taken into consideration.

The following is deducted or excluded from the income of persons included in the group of jointly assessed persons for the purposes of assessment of material hardship:

- 25% of income from employment (e.g. income from an employment relationship), 25% of the amount of old-age pension (if the pensioner has more than 25 years of pension insurance, then the deductible amount is increased by 1% for every year above that period), and 25% of the amount of disability pension, orphan's pension, or widow's (widower's) pension, if the recipient of these pension has reached retirement age
- 25% of the amount of maternity benefits
- the entire amount of the child allowance and supplements to the child allowance,
- income from occasional work to two times the minimum subsistence level (€389.16) over the period of 12 months,
- scholarships, earnings of secondary school students, earnings of full-time higher education students not exceeding 1.2 times the minimum subsistence level (€102,21) over the past 12 months,
- selected contributions provided to job seekers in the context of measures and instruments related to employment services.

The income of the group of jointly assessed persons is determined for the calendar month, in which the application for the assessment of material hardship and provision of basic living standards and assistance in material hardship was submitted. At the same time, the average monthly income over the past twelve calendar months prior to the submission of the application is taken into account. If the total of the income quantified for persons included in the group of jointly assessed persons is lower than the total subsistence minimum of these persons, then these jointly assessed persons are considered to be in material hardship and unable to ensure their basic living standards and need to be provided assistance in material hardship.

Even if the jointly assessed persons meet the above conditions (or in other words, the result of the assessment procedure is positive), they are not considered without further to be persons in material hardship if they can deal with the situation through their own effort.

For the purposes of assessment of material hardship, provision of basic living

standards[92] and assistance in material hardship, own effort to earn (or increase) one's income means 1. own work, 2. use of own property (including hire or sale of the property) and 3. exercise of statutory entitlements under social security systems (e.g. entitlement to sickness benefits or old-age pension).

Definition the expression "own effort" reflects primary attribute of the social assistance system – the subsidiarity of assistance (especially on the part of the state). The possibilities of groups of assessed persons to secure income are examined according to definitional characteristics of this expression.

Own work as the first character is not examined in the cases:

- an individual who has reached pensionable age,
- an individual recognised as a disabled person whose capacity to undertake employment is reduced by more than 70%,
- a lone parent who is the carer of a child younger than 31 weeks personally full-time,
- a full-time carer of a child with severe disability or person with severe disability, if these persons are depended on care,
- a person with ill health, if, according to a medical opinion, the condition will last more than 30 days.

Another aspect of "own effort" for the purposes of ensuring basic living standards and providing assistance in material hardship is the **use of own property** (including property rights). This aspect does not apply to:

- property – real estate – used for appropriate permanent housing (the appropriateness of housing is not examined if the person has reached pensionable age),
- farming and forest land for own use,
- movable items which are necessary household articles or for the acquisition of which social benefits have been provided from the social assistance system,
- movable items the hire or sale of which would be contrary to morality
- a passenger vehicle of which the person is an owner or holder, if the vehicle is of little value (to € 6810.30), vehicle is older then ten years or is used to transport a person with a severe disability.

The last aspect of "own effort" are claims to statutory entitlements. In the second step of the process of assessment of material hardship, the minimum subsistence benefit and the allowances to the minimum subsistence benefit are granted.

The amount of the minimum subsistence benefit and allowances to the minimum subsistence benefit to be provided is the difference between the minimum subsistence benefit, including the allowances, and the income of the group of jointly assessed persons. No income or benefit amount is deducted or excluded from the income for this purpose. The minimum subsistence benefit and the allowances are provided in cash or in kind (one hot meal, the necessary clothing and shelter).

The minimum subsistence benefit and the related allowances can also be provided in the form of advance payments[93], if proceedings on nursing allowance payments,

[92] The relevant legal regulations define basic living standards as one hot meal per day, necessary clothing and shelter for the individual and persons jointly assessed with the individual.

[93] The provision of the minimum subsistence benefit and the related allowances in the form of advance payments is not possible in the case of the activation allowance, when provided to a

the income replacement benefit during employee's temporary incapacity for work, a social insurance benefit, a recurring state social benefit, proceedings to establish father/son relationship, proceedings on maintenance and substitute maintenance payments, or proceedings on entitlements from an employment relationship have been initiated. When the proceedings are completed and the ruling becomes final, the relevant office of labour, social affairs and family decides on the amounts of the benefits and allowances, taking the extent of entitlements awarded into account. At the same time, this office will either provide the remaining part of the benefits and allowances or request the return of the amount provided. If the benefit(s) is/are awarded, the amount of the minimum subsistence benefit paid in advance is accounted for against the benefit awarded.

If the minimum subsistence benefit and the allowances to the minimum subsistence benefit are not used for the intended purpose, the relevant office of labour, social affairs and family can assign a special recipient of the benefits, which is usually the municipality, a legal entity or a natural person. The role of the special recipient is to ensure that the minimum subsistence benefit and allowances, provided in cash or in kind, are used only to the benefit of persons in material hardship.

The minimum subsistence benefit and the related allowances are not subject to any statutory revalorisation mechanism, i.e. the amounts may be, but do not have to be, adjusted annually, effective from 1st September by decision of the Government of the Slovak Republic.

Minimum subsistence benefit

The amounts of the minimum subsistence benefit depends on the number groups of assesse persons. For an individual is the amounts of the minimum subsistence benefit €60.50 monthly, for an individual with no more than four children is €115.10 monthly, for an individual with more than four children is €168.20 monthly, for a couple without children is €105.20 monthly, for a couple with no more than four children is €157.60 monthly and for a couple with more than four children is €212.30 monthly. The minimum subsistence benefit is increased by €13.50 monthly if the group of jointly assessed persons includes a pregnant woman94. A further €13.50 monthly is provided if the group of jointly assessed persons includes a one parent of a child below one year of age (proof that preventive medical check-ups have been taken is required). The subsistence benefit also increases by an amount € 17.20 monthly for a child, if the child performs the compulsory school attendance, in the purpose of ensuring its basic living conditions. (until 16 years of age).

Healthcare allowance

The purpose of this allowance is to help cover the costs of services related to healthcare. The eligible person is any person belonging to the group of jointly assessed persons. The condition for the provision of the allowance is that the persons included in the group of jointly assessed persons meet the conditions for entitlement to the minimum subsistence benefit.

The amount of the healthcare allowance is €2.00 monthly.

---

long-term unemployed person who undertook employment or self-employment, and in the case of the benefit for parents with a child below one year of age.

94 The higher amount is provided from the fourth month of pregnancy providing that the woman attends antenatal counselling.

Housing allowance

The housing allowance is provided to help cover the costs related to housing borne by a person in material hardship included in the group of jointly assessed persons.

The benefit scheme requires proof of the following:

- the person from the group of jointly assessed persons is the owner or tenant of an apartment (or family house) or a tenant of a room in a permanent accommodation facility (e.g. a lodging house), or the right to life tenancy has been given to the person[95], and
- this person pays the housing-related costs (proof of payment of these costs in the preceding six months is required) or has overdue payments for housing-related costs which have been acknowledged by the person and a repayment agreement has been concluded.

The housing allowance is provided without examining the conditions contained in the benefit scheme:

- to a person who has reached pensionable age and receives pension benefits, or
- a person placed in a social service establishment with year-round accommodation.

The satisfaction of the conditions for granting the housing allowance is reviewed regularly, every six months.

The amount of the allowance is €55.80 monthly for a person assessed individually and €89.20 monthly for a group of two or more jointly assessed persons.

Income support allowance

The purpose of this allowance is to respond to situations in life when a person from a group of jointly assessed persons is unable to earn income through own work and thus ensure basic living standards and deal with material hardship.

The eligible person is any person from a group of jointly assessed persons created for the purposes of assessment of material hardship.

The benefit scheme requires proof of satisfaction of any of the reasons for which the assessed persons' ability to earn income through their own work is not examined (*see above*). This allowance cannot be granted concurrently with the activation allowance.

The amount of the income support allowance is €63.07 monthly and €34.69 monthly for a person with impaired health, which, according to medical assessment will take more than 30 days.

Activation allowance

The purpose of the activation allowance is to give financial incentives to persons from a group of jointly assessed persons wishing to join the labour market, retain their job or extend their knowledge and skills or retain their working habits. The eligible person is any person from a group of jointly assessed persons created for the purposes of assessment of material hardship. The eligible person in relation to increasing the qualification in selected forms of study and in relation to projects which are focused on education and training for job market is a undependent child, who belongs to group of jointly assessed persons.

[95] For the purposes of the housing allowance, housing also includes the placement of a person in a social care establishmen.

The benefit scheme is targeted at three different groups of persons in material hardship:

1. employed persons or 2. unemployed persons, if:

- they are pursuing higher qualifications (by attending evening courses, a combined or part-time form study), unless they have completed the second level of university education, or
- they participate in training or preparation for the labour market in projects approved by the state authorities for the field of social affairs and employment services, or
- they participate in performing the minor municipal services in fulfillment of obligations which the resident of municipality has according to the Law on Municipalities; the minor municipal services shall be made under a written agreement with the municipality of residence or with the budgetary or contributory organization of municipality max in the range 10 - 20 hours. weekly, or
- long-term unemployed person performs activation program in form the minor municipal services for the municipality or in form the minor services for the Self-Governing Region (higher territorial unit) under a written agreement with the office of Labour, Social Affairs and Family; according to the Employment Services Act No. 5/2004 Coll.

The activation allowance is provided until the above circumstances exist (study, training and preparation for the labour market, performance of work for the municipality).

This does not apply, if unemployed resident of municipality person performs the minor municipal services and receives a contribution for 18 months, in this case the contribution is provided repeatedly only after 6 months.

3. persons who have entered into an employment relationship or become self-employed, if:

- prior to the commencement of employment, the person was long-term unemployed or registered in the job-seeker register for at least twelve months in the last 16 months preceding the commencement of employment
- prior to the commencement of employment, the person was receiving assistance to ensure basic living standards and assistance in material hardship
- in the case of an employee, the agreed pay must amount to at least the minimum wage and must not exceed three times the amount of the minimum wage.

If the activation allowance is provided in connection with the commencement of employment, the support period is six months.

Persons in material hardship, who are in pursuit of secondary or higher education (and have not completed the second level of university education) and receive the parental allowance, are also entitled to the activation allowance.

The amount of the allowance in any of the above cases is €63.07 monthly.

One-off material hardship benefit

This benefit is provided optionally and exclusively by municipalities (under their self-governing authority) to persons in material hardship to cover extraordinary costs (in particular the necessary clothing, basic household items, schooling needs for dependent children and extraordinary medical expenses).

The amount of the one-off material hardship benefit is relative to the costs actually incurred and may not exceed three times the minimum subsistence level (€583.74).

7.2. Social assistance for persons with severe disabilities

In this section, we will focus on the clarification of financial compensation for the social consequences of severe disability and then on the providing the social services for person with severe disability.

A **person with severe disability** is a person whose disability, according to the medical assessment carried out, causes a functional impairment to the degree of at least 50%. The degree of functional impairment of a person with a disability is the person's deficiency in physical, sensual or mental abilities, which, in terms of the development of the disability, is expected to last longer than twelve months.

The disadvantages arising from disability are the social consequences of severe disability, faced by disabled persons compared with a person of the same age and gender without a disability and under equal conditions, which the disabled persons are unable to overcome through their own effort due to severe disability. The elimination of the social consequences of severe disability is precisely the purpose of the benefit payments and social services provided to compensate for a severe disability (specified below).

The process of assessment of the person's condition is carried out by means of assessment activities at two levels, namely medical and social assessment activities.

1. Medical assessment activities are[96]**:**

- the evaluation and assessment of the condition, changes in the condition and impairments causing a person's disability,
- assessment of the degree of functional impairment. The percentage degree of functional impairment is determined according to the specific disability and the relevant percentage range as specified in a list defined by law. The criteria for assessment of the degree of functional impairment vary depending on the type of disability (functional impairment of the organ, seriousness of the disease, phases of the disease, number of attacks, and impacts on other organs with a view to the overall condition of the organism). If multiple functional impairments are present, the degree of impairment corresponds with the degree of functional impairment caused by the disability with the highest percentage rating. The percentage rating of a functional impairment may be increased by no more than 10%, if other functional impairments have an unfavourable influence on the disability with the highest percentage rating.
- assessment, in terms of compensations, of the social consequences faced by the person as a result of severe disability compared with a natural person without disability.

Compensations for the social consequences are provided in the following areas:

[96] This type of assessment activities includes the assessment of persons' physical and mental abilities to provide nursing and assessment of the physical and mental capacity of the person with severe disability to grant written consent for caring to the provision of nursing by another natural person.

- mobility and orientation – compensation for reduced mobility and orientation ability. The purpose of the compensation is to mitigate or overcome the disadvantages in access to the necessities of everyday life and buildings and facilitate orientation and movement.
- communication – compensation for deficits in communication ability. The purpose of the compensation is to facilitate social contact and provide access to information.
- increased costs – compensation for the cost of dietetic foods and expenses related to:

1. hygiene or wear and tear of clothing, linen, footwear and household equipment,
2. the operation of a passenger vehicle,
3. care of a specially trained dog (especially food and the veterinary inspection).

The purpose of the compensation is to alleviate the consequences of increased costs associated with the person's severe disability.

- self-care – compensation for a decline in, or loss of, self-care ability. The purpose of the compensation in this area is to provide assistance in self-care (in particular the acts of self-care, household keeping and basic social activities).
- assessment of the specific types of reliance of a person with severe disability on compensation, namely:

a) **reliance on assistance from others** by means of personal assistance or nursing. The person is reliant on personal assistance with respect to activities defined by law (e.g. basic personal hygiene, eating, communication, transport and accompaniment to social establishments, etc.)[97] and the mission of personal assistance (in particular activation and facilitation of social integration). A person with severe disability is deemed to be reliant on nursing if, according to the point-based evaluation of his or her ability to perform selected tasks of everyday life, the person's degree of reliance on assistance from others reached the level defined by law (for the purpose of providing the financial contributions is this 5th or and 6th degree of reliance for the purpose of providing the social services is this between 2nd and 6th degree of reliance). The evaluation is based on the award of points (0, 5, or 10 points) in twelve selected areas of tasks of everyday life, on the basis of which a table is created[98] specifying not only the degree of reliance, but also the average per-day and per-month degree of reliance expressed in hours.

b) **reliance on medical equipment, modification of medical equipment, lifting equipment, vehicle modification, home or garage modification.** This type of reliance is considered demonstrated if this equipment and modifications can help overcome or ease the social consequences of a person's severe disability.

c) **reliance on individual transport by car.** This type of reliance is considered demonstrated if a person is unable, under the same conditions as others, with-

[97] The complete list of activities forms part of Annex No. 4 to Act No. 447/2008 Coll.

[98] Inverse correlation is applied in the point evaluation. The smaller the number of points, the higher the degree of reliance on assistance from others.

out compromising the person's dignity, to access a public transport vehicle, get on and off the vehicle or travel safely in the vehicle (including rail cars) or handle other situations that may occur in the public transport vehicle due to severe disability.

d) **reliance on compensation of increased cost of dietetic foods.** This reliance is based on a (statutory) list of diseases or impairments.
e) **reliance on compensation for increased hygiene-related costs.** This reliance is based on a (statutory) list of diseases or impairments.
f) **reliance on compensation for increased cost related to tear and wear of clothing, linen, footwear and household equipment.** This type of reliance is caused by a chronic illness (e.g. severe walking impairments) or the use of technically complex equipment (e.g. an electric wheelchair), as specified in the relevant list.
g) **reliance on a guide.** This type of reliance arises from the need to provide assistance in mobility, orientation and communication with the social environment to a person (older than three years) by another person or a specially trained dog.

The medical assessment is carried out by the medical assessor of the relevant office of labour, social affairs and family, in cooperation with general practitioners, paediatric doctors, medical specialists or social workers. The basis for the medical assessment used by the medical assessors includes an up-to-date medical opinion no older than six months (exceptions are permissible in the case of a chronic condition involving a permanent impairment, where the degree of functional impairment is definite and medical treatment is not expected to result in improvement). In case of doubts about the accuracy of a diagnostic conclusion arising from the presented medical opinion or if the impartiality or completeness of the medical opinion needs to be verified, the medical assessor may call the person for examination. Otherwise, the medical assessment is conducted without the presence of the person under assessment, unless a request is made in writing that the person wishes to be present for the assessment. The person may submit further medical records, not included in the medical opinion, in the course of the procedure.

The outcome of medical assessment is a **medical opinion** containing:

a) a statement of the degree of functional impairment,
b) a statement whether the person in question is severely disabled,
c) conclusions with respect to the specific types of reliance of the person with severe disability, and
d) the date of review assessment, if changes in the degree of functional impairment can be expected. The medical assessor does not set a date for review assessment if the person has a chronic condition with permanent impairment, the degree of functional impairment is definite and further treatment cannot be expected to result in improvement.

There are different requirements with respect to the content of medical opinions elaborated in connection with the proceedings on the purposes of the severe disability card or disability parking card.

2. Social assessment activities, which are not performed until after medical assessment has been completed (and the person is considered severely disabled), are an

assessment of:

a) **the individual abilities of a person with severe disability**, i.e. the assessment of individual abilities of persons and their willingness to deal with their unfavourable situation through their own effort,
b) **the family environment of the person with severe disability,** specifically, assessment of the ability and scope of assistance provided to the severely disabled person by the family (for these purposes, family means the spouse, parents and children),
c) **the environment affecting the severely disabled person's ability to integrate into the society**, i.e. the assessment of access to transport systems and housing conditions, including accessibility of public facilities,
d) **assessment of all types of reliance of a person with severe disability** (*for the purposes of granting the parking card, only mobility and orientation abilities are considered*),
e) **proposal of compensations** in specific areas (mobility and orientation, communication, increased costs, and self-care).

The first three above are reviewed by dependency on social services too. The extent of dependency persons on the care of the household and the extent of dependency persons on performing basic social activities is determined specifically for day care activity.

Social assessment activities are carried out by a social worker of the relevant office of labour, social affairs and family.

Social Assessment activity is performed with the purpose to assess the dependency on on care services and the dependency on on social service which is provided in supported housing facilities, in facilities for seniors, in care services facilities, in rehabilitation center, in social service home, in specialized facilities, (designed for people with Parkinson's disease, Alzheimer's disease, multiple sclerosis), in daily stationary. This activity is administrated by social worker of municipality / Self-Governing Region. When performing social assessment activities, the social worker cooperates, in particular, with the medical assessor and experts from the fields of civil engineering, architecture, ergotherapy, and medical equipment. Assessment activities are carried out in the presence of the persons under assessment, who are entitled to present their needs and proposals for improvement of their social situation (*alternatively, the assessment can be carried out in the presence of a person appointed by the severely disabled person and in the environment where the severely disabled person usually resides*).

The **outcome of social assessment is the assessment opinion on the social consequences of severe disability** specifying: 1. the social consequences of severe disability in all relevant areas of compensation and 2. proposals for compensation in all relevant areas of compensation. The outcome of social assessment of dependency on social service is a social opinion. The social opinion includes handicaps of person´s with severe disability in acts of daily living, in acts of caring for your home and in basic social activities compared to a person of the same age and sex without disability or without ill health.

The medical opinion and assessment opinion are used by the office of labour, social affairs and family to elaborate a **comprehensive assessment for the purposes of compensation. This comprehensive assessment specifies, in particular**:

- the degree of functional impairment
- social consequences of severe disability in all areas of compensation *(if the need for assistance from others by means of personal assistance has been demonstrated, the annual scope of assistance in hours is also specified; this may not exceed 7 300 hours)*,
- the proposed types of compensation benefits, and
- other statements (*e.g. reliance on a guide or individual transport by car, practical blindness (i.e. substantial impairment of vision) or complete blindness of both eyes)*.

The comprehensive assessment is not required for the purposes of the severe disability card and no new comprehensive assessment is elaborated if the degree of functional impairment is at least 50%.

The result of the medical opinion and of the social assessment in the system of social services is the opinion of dependency on social services, which includes:

a) the degree of the person's reliance on assistance from others,
b) the disadvantages faced by the person with severe disability or ill health in respect of self-care, household keeping and basic social activities,
c) proposal of the type of social service to be provided,
d) date for a review medical assessment.

The relevant legal regulation provides for the following compensation benefits:

a) personal assistance allowance,
b) medical equipment allowance,
c) medical equipment training allowance,
d) medical equipment modification allowance,
e) medical equipment repair allowance,
f) lifting equipment allowance,
g) allowance towards the purchase of a car,
h) vehicle modification allowance,
i) transport allowance,
j) apartment modification allowance,
k) house modification allowance,
l) garage modification allowance,
m) allowance to compensate for increased costs,
n) nursing allowance.

Personal assistance allowance, transport allowance, allowance to compensate for increased costs and the nursing allowance are cash allowances provided on a regular basis. The rest of the allowances are one-off allowances. There is no legal entitlement to the allowances, even if the statutory requirements for granting them have been satisfied. The granting of the allowances is at the arbitrary discretion of the relevant office of labour, social affairs and family.

The granting of the optional allowances to persons with severe **disability is income- and means-tested**, **which includes the jointly assessed persons (the groups of jointly assessed persons are similar to those used for assessment of material hardship).** The "net" monthly income in the calendar year preceding the year in which the person applied for the respective compensation allowance is considered. The income of a person with severe disability is determined as the total of the incomes of the person with severe disability and jointly assessed persons divided by

the number of persons whose income is being jointly assessed and included in the total. This income is reviewed every year in July and is applicable until the end of June of the following year.

The property of a person with severe disability is examined by means of a declaration on oath, in which the person declares that the value of his or her property does not exceed €39 833[99]; in case of any doubts, an expert opinion is commissioned.

In the case of cash allowances towards the purchase, modification or repair of medical equipment (including a specially trained dog), training in medical equipment use, purchase of lifting equipment, purchase and modification of a car, home or garage modification and transport allowances, the amount of the allowance is based on the person's ascertained income. At the same time, an income limit is set for granting the allowance. The mechanism is based on comparison of the ascertained income of a person with severe disability and a multiple of the subsistence minimum per adult person defined by law. The lower the ratio between the person's income and the subsistence minimum, the higher the allowance provided. In addition to a percentage limit, the maximum amount of the allowance is limited by the maximum purchase price of the equipment or vehicle and the maximum home or garage modification costs (including maximum construction work prices).

In order to ensure regular (annual) revalorisation, the hourly rate for assistance is determined as a percentage of the minimum subsistence figure, specifically, 1.39% of the minimum subsistence figure (€2.70). If the income of the person with severe disability exceeds four times the minimum subsistence level, the amount of income above this limit is deducted from the amount of the allowance provided. The allowance is paid monthly in arrears against a report on the number of hours worked in the preceding month (max. number of hours of assistance per year is 7300 and in individual cases is determined in a complex report), which is submitted to the office of labour, social affairs and family.

The amount of the nursing allowance depends on the income of the severely disabled person (including pension benefits received by this person), the caregiver's income, the number of persons to whom nursing is provided, the fact if daily residential social services is/ isn´t granted person with severe disability or depends on if the person with severe disability attends an educational establishment. If the caregiver provides nursing to one disabled person, the allowance amounts to 111.32% of the minimum subsistence level; if nursing is provided to two or more persons, the amount of the benefit is 148.42% of the minimum subsistence level[100]. If the person does not pursue employment and at the same time cares for a person with a severe disability, which is dependent child, the amount of the allowance is increased by €49.80 monthly. Any income of a severely disabled person above 1.4 times the minimum subsistence level is deducted from the amount of the allowance provided. If the severely disabled person is a dependent child, the income limit is three times the minimum subsistence level.

[99] Property for own use, as specified in the section on the assessment of material hardship, is not included in the value of property owned by the person.

[100] The allowances are reduced if a person with severe disability is also provided a social service, daily stays in a social establishment, or attends a school establishment for no more than 20 hrs weekly.

Social service is a specialised professional activity (e.g. social counselling, social rehabilitation, work therapy, nursing care, assistance in the exercise of rights and interests protected by law), personal care (e.g. bed and board, clothes cleaning, ironing) or other activities (e.g. interest activities, basic personal needs, clothing and footwear, food delivery) or a set of these activities focusing, above all, on:

- the prevention, resolution or alleviation of unfavourable social situation of a person, family or community,
- preservation, restoration or development of personal skills to enable a person to lead an independent life and support the person's integration into society,
- the provision of the necessary conditions for the satisfaction of basic living standards of a person (in particular bed, board and clothing),
- the resolution of a crisis social situation of a person and family, and
- prevention of social exclusion of a person and family.

Social services are provided in the form of out-of-home services, field services, residential services, or in other forms depending on the type of unfavourable social situation and environment in which the person resides (e.g. by phone or by means of other telecommunications technologies).

Social services provided in order to deal with an unfavourable social situation caused by severe disability, ill health include or reaching pensionable age:

1. the provision of social services in an establishment for persons reliant on assistance from others and persons in pensionable age,
2. nursing services,
3. transport services,
4. guidance and reading services,
5. interpreting services,
6. facilitation of interpreting services,
7. facilitation of personal assistance,
8. medical equipment lending.

The opinion on reliance on social service is serves as a basis for a decision by the municipality or higher territorial unit about dependency on to the appropriate social service provided by the municipality or higher territorial unit. The proceedings of dependency on social service begins at the request of the person, who is in unfavorable social situation, or his legal representative and in cases of obligatory social assessment for assessing dependency of the individual. Social services are supplied generally under the contract about the providing the social service between the registered provider of social services and social services recipient. By providing the specifical social services the legal norm orders obligatorily to make a contract in written form (§ 74 paragraph. 2 of Law no. 448/2008 Coll). Social services are usually charged and paid for by the recipient of a social service. The amount of the charges depends on the type of the social service, the type of provider of social service (especially if it is a public provider, nonpublic provider or nonpublic provider of social services which is provided for profit). The amount of the charges, in the case of residential care which addresses the unfavorable social situation because of severe disability depends on income and assets (including property rights over € 10,000) of social services recipient (including unfavorable health condition, personal care assistance for the child and support harmonization of working life and family life). The last one does not apply if the recipient

of service doesn´t request the municipality / higher territorial unit for providing the service or if the service provider is a non-public provider of social services which he provides for profit). Municipality and higher territorial unit ensures the availability of social services in its competence, following a request for a contract about providing the social service for a person who is depended on social service. Municipality provides social services itself, if it is registered as a provider of social services or through another provider in the region of higher territorial unit or in extreme cases even outside the region of higher territorial unit. The municipality or the higher territorial unit are obliged (under a written contract) to provide a financial contribution for private provider of social services who doesn´t provide social service for profit, if private provider asked for this financial contribution. The financial contribution is used for operation of provided social service and for in case, when the person is depended on help of other person by acts of self-servicing.

Selected types of social services are exempt from charges (e.g. social counselling and social rehabilitation), if these social services are realized by non-public provider.

In the case of public and non-public provider of social service, the amount of charges is limited by the amount of eligible expenditure (wages, insurance, depreciation of assets, etc. are taken into consideration), with the exception of for profit non-public providers. In the case of public providers of social service, the charges are specified in the agreement on the performance of social service, which must be negotiated in compliance with the conditions contained in the relevant universally binding regulation of the municipality or higher territorial unit. The law defines a group of social services for which written agreements on the performance of social service must be concluded by the provider of social service.

For selected types of social services (e.g. residence, transport and nursing services), the amount of charges for the relevant social service depend on the income of the person reliant on assistance from others ascertained after the charges for the given social service have been paid, as well as on the form of the service. This does not applies, if the recipient of a social service is obliged to pay for social service the payment in the amount of eligible costs which are associated with providing this service. Finally, if the recipient of a social service does not become obliged to pay for the social service, this obligation is carried over to the person's parents and children, providing that their income was not assessed jointly as in the case of compensation allowances (they must be able to retain income amounting to at least 1.3 times the minimum subsistence level for one person). Parents' and children's payment obligation arises from an agreement on the payment of charges for social service or from a decision of the municipality or higher territorial unit.

8. ORGANIZATION AND PERFORMANCE OF THE SOCIAL SUPPORT AND SOCIAL ASSISTANCE

A sign of the social support system, state-managed redistribution system means, that the organization of the system is in the hands of the state, system of state authorities being granted competence to perform (specialized) state administration in the field of social affairs and employment services, and within it to manage a department of state social benefits. According to the Act No. 453/2003 Coll. is the area of social affairs and employment services within the scope of the Central Office of Labour, Social Affairs and Family (as a central, coordinating and supervisory authority) and Local Labour Office, Social Affairs and Family (as regional public authorities) with enforcement powers. The stated organization construction is backed by a central government body for the related area by the Ministry of Labour, Social Affairs and Family of the Slovak Republic, which has an ultimate executive and management competence.

The social assistance system, unlike the system of state social support is built on a plurality of entities providing assistance in dealing with material and social needs. The stated feature is characteristic especially for a subsystem of social services. The assistance in material need is institutionally executed by a specialized state administration in the field of social affairs and employment services (and within it also the social assistance) as Central Office of Labour, Social Affairs and Family, Local Labour Office, Social Affairs and Family as well as the territorial self-governing body and a municipality. In the case of cash benefits to compensate for severe disability it is solely a specialized state administration and the Ministry of Labour, Social Affairs and Family. Finally, in the case of social services subsystem it is a specialized state administration, self-government represented by the municipality and a higher territorial unit and a natural person or a legal entity in a position of social service provider. The higher territorial unit[101] and the municipality can provide social services directly within their competence or indirectly as a founder (or founders of a legal person providing social services). These are called public providers of social services. Private providers of social services are natural or legal persons with permanent residence or registered office outside the territory of the Slovak Republic. Both groups of providers of social services shall be subject to registration obligation of the higher territorial unit. Municipalities and higher territorial units have the statutory obligation to contribute to the operation of private providers of social services and to contribute to social services for persons reliant on the help of another natural person (e.g., acts of self-service), if they asked for provision of a social service – the provider, who does not provide social services for gain. Municipality and

[101] The higher territorial unit is obliged to meet a requirement of providing social consultancy for the purpose of its own competency to provide social services.

higher territorial unit may also contribute to the operation of selected social services provided by non-public providers. Finally, municipality and higher territorial unit may contribute to the operation of the designated social services and social services for persons reliant on the help of another natural person if the other subject shall not provide a benefit for the social services i.e., municipality and higher territorial unit substitutes each other. A financial contribution to the operation and a financial contribution for person reliant on the help of another natural person for acts of self-servicing is provided under the contract. The competence of the municipality or higher territorial unit is determined by the permanent residence of the recipient of social services.

II. Labour law

Introduction

The majority of the active population ensure their livelihood by performance of depend work for remuneration /wage. The people want to find a job that can be carried out under the appropriate, serious conditions and which provide not only financial resources but also personal growth. The employee then has the obligation to work and the employer the obligation to provide an employee a job and pay him/her wage, but the employer also has the right to demand quality and efficient work performance of the employee. Also at present labour law has its place in the system of law, and is also an important tool for economic development**. Labour law** regulates the mutual rights and obligations of employer and employee (and employees' representatives) **during the performance of dependent work.**[102]

The Labour law is a ***part of private law***, but has also a hybrid nature because some labour law regulations are part of public law (the area of health and safety at work).

The labour law, represented primarily by the Labour Code, is mainly a mandatory law, so the contractual freedom of parties is limited. It is necessary to note that the Section 1 (4) of the Labour Code regulates the subsidiary power of the Civil Code (Act No. 40/1964 Coll. as amended) – its general part, with respect to the first part of the Labour Code concerning general law institutes such as validity of legal act, process of concluding of agreement.

We will deal with the performance of depend work ***in the private, business area*** (without taking into account the specifics of work as special categories of employees. transport, private security services, etc.), and attention will not be paid to the performance of work under special conditions, for example in the area of the civil service, public service or employment of police officers, soldiers.

Employment relationships together with rights and duties of their subjects are regulated mainly by a set of ***normative legal acts*** (generally binding regulations).[103]

At the national level, the sources of labour law are hierarchically structured as follows:

- The Constitution of the Slovak Republic (Act No. 460/1992 Coll. as amended (effective from 1st October 1992)
- Parliament Acts ("Statutes");
- Secondary legislation (regulations issued by executive bodies with universal jurisdiction – decrees of The Government of the Slovak Republic, regulations of Ministries, etc.).

Basic generally binding acts in the area of Slovak labour law for private employment relationships (i.e. excluding the field of public and state services) are:

- Act No. 311/2001 Coll. ***Labour Code*** as amended (Labour Code);
- Act No. 2/1991 Coll. on Collective Bargaining;
- Act No. 5/2004 Coll. on Employment Services;
- Act No. 124/2006 Coll. on Health and Safety at Work;
- Act No. 125/2006 Coll. on Labour Inspectorate;

[102] Barancová, H. In: Barancová, H., Schronk, R.: Pracovné právo. Bratislava, Sprint 2 s.r.o. 2012, p. 38 et seq.

[103] Schronk, R. In: Barancová, H., Schronk, R.: Pracovné právo. Bratislava, Sprint 2 s.r.o. 2012, p. 61 et seq.

- Act No. 82/2005 Coll. on Illegal Work;
- Act No. 663/2007 Coll. on Minimum Wage.

The specific sources of Slovak labour law are ***collective agreements***.

In the area of labour law also some ***internal normative regulations (internal rules)*** issued by employers may be classified as a source of law. These internal rules are issued on the basis of the labour law and their purpose is to concrete the subjects' rights and duties. The fundamental condition for their validity is proper employees' acquaintance with the regulations' content. Among these regulations we can find mainly "the work (labour) order" issued according to Section 84 of the Labour Code, rules regulating health and safety at work issued according to Section 39 (2) of the Labour Code and norms of consumption of work issued according to Section 133 of the Labour Code. The Labour Code does not regulate issuing of any other internal rules such as directives or internal instructions. The only legal requirement is that they shall be in conformity with the valid law and the employer must acquaint employees with them.

When it is explicitly stated in any legal provision regulating labour, as a source of law may be considered also ***"good manners"*** ("bono mores").

1. THE LABOUR – LAW RELANTIONSHIP (object, subjects, content)

The law relationship is social relationship between at least two subjects defined by law and the subjects have some rights and duties, which arise on the basis of legal regulations.[104]

The law relationships which regulate the performance of dependent work and in which rights and duties are regulated by labour law are characterised as **labour –law relationships.** In the individual labour-law relationship the natural person performance the dependent work for remuneration for the employer. The collective labour-law relationships are relationships between employees' representatives and employers or their representatives.

The labour law theory distinguishes the basic, related and other labour law relationships. The basic labour law relationships are employment relationships (arise on the base of employment contract) and relationships arise on the base of agreement outside the employment.

The related labour-law relationships are relationships connected with liability, relationships in the area of controlling the health and safety at work or in the area of services of employment.

The other labour-law relationships are relationship in which natural person perform work and Labour Code regulates them partially, there are subsidiary or delegated applicability.

The basic labour-law relationship is employment relationship.[105] The Labour Code does not contain a legal definition of employment relationship. The employment relationship shall be **established by employment contract** only in accordance with Section 42 of the Labour Code.

Labour-legal facts are the facts with which the labour law connects the creation, modification and termination of the rights or obligations of labour-law relationships.

Legal facts are divided:

- legal events - objective legal facts are the natural or social event of various kinds, which are independent of the will of the human (e.g. death, the passage of time),
- legal action - legal facts are subjectively fact which are connected with the will of subject.

[104] Barancová, H. In: Barancová, H., Schronk, R.: Pracovné právo. Bratislava, Sprint 2 s.r.o. 2012, p. 143-150.

[105] Barancová, H. In: Barancová, H. a kol.: Pracovný pomer a poistný systém. Bratislava, Veda a Typi Universitatis Tyrnaviensis 2008, p. 56 -72.

On the basis to the relation to the objective law they are divided into acts and unlawful acts.

Every legal relationship has own object, subjects and contain. **The object (subject matter) of the labour-law relationship** is in general activity of a human, which is characterised by performance of dependent work. The object of employment relationship is work that meets certain legal characteristics. The work must meet characteristics of such work that the employee performs for another. The work must be a human, free, non-independent, i.e. economically and personally dependent, remunerated and performed personally.

The content of labour-law relationships is created by rights and obligations of participants of relationships.

The subject of labour-law relationship is a person who has certain rights and obligations arise on the basis of the labour legal fact. The necessary requirement for possibility to be a person of labour-law relationship is the legal labour-legal capacity. There are some categories of subjects in labour-law relationships: the employee, the employer, the organisations of the employers, the organisations of the employee (employees' representatives) and the state.

It is necessary to distinguish between subject of labour law and subjects of labour-law relationships. The subjects of labour law are the subjects who in accordance with rules of labour law should have rights and obligations (potential subject of relationship). The general requirement to be a subject of labour-law relationship is legal capacity. The labour legal capacity can be defined as a summary of established attributes which are set by norms of labour law and which are necessary to person be a subject of rights and obligations of labour-law relationships.

EMPLOYER

The employer shall be a legal person or natural person employing at least one natural person in labour-law relation and, if so stipulated by a special regulation, also in similar labour-law relations (Section 7 and 8 of the Labour Code). [106]

The employer – legal person

Labour law grants a legal status of employer to any legal entity, if such a legal status belongs to the legal entity pursuant to Civil Code, provided that the employer employs at least one employee. The organizational unit of an employer shall also be an employer, if stipulated by special regulations or statutes under special regulation.

The employer –natural person

The legal capacity of a natural person to rights and obligations in the labour-law relations as an employer shall arise at birth. A conceived child, if born alive, shall also possess such capacity.

The legal capacity of a natural person to acquire rights and take on obligations as an employer in the labour-law relations by their own legal actions shall arise upon reaching majority; until such time, a legal representative shall act on the person's behalf.

Acting on behalf of the employer (Section 9 and 10 of the Labour Code)

All legal actions on behalf of the employer - legal person makes a statutory body or

[106] Barancová, H. In: Barancová, H., Schronk, R.: Pracovné právo. Bratislava, Sprint 2 s.r.o. 2012, p. 173-180.

members of statutory body; the employer - natural person acting in person.

Some legal acts make those employees, especially leading organizational units to which this authority stems from their functions for organizational regulations. So some legal actions are entitled to do employees whose position (managerial employees) contains the possibility to act on behalf of the employer in certain area.

Another employees are entitled to act on behalf of the employer if the employer empowered them in writing (in the written authorization must be given the extent of their competence).

Legal actions of statutory bodies, empowered employees and managerial employees shall be binding for the employer who on the basis of these actions acquires rights and obligations (exception: If a statutory body or empowered employee overstepped their competence in labour law relations, by way of legal action, such actions shall not be binding for the employer if the employee was aware, or must have been aware, that such statutory body or empowered employee overstepped their competence).

The possibility to act on behalf of the employer has also a person (natural or legal) who represent the employer under the power of attorney (representation under the Civil Code).

EMPLOYEE

The employee (Section 11 of the Labour Code) shall only be a natural person performing the dependent work for the employer. [107]

The legal capacity of a natural person as employee to rights and obligations in the labour-law relations and the legal capacity of a natural person to acquire rights and take on obligations as an employee in the labour-law relations by their own legal actions arise when the natural person reached 15 years of age.

The employer may not agree the date of commencement of work the date before the end of compulsory school attendance. The employee can conclude the agreement on material liability at the earliest upon the day he/she reaches 18 years of age.

The natural persons below the age of 15 or natural persons older than 15 but prior to the conclusion of compulsory school attendance are prohibited from work. These persons can perform only 'light work' providing that its nature and scope poses no risk to their health, safety, further development or school attendance, when they participate in cultural or artistic performances, sports events or advertising. The performance of light work is subject to the employer's request being permitted by the labour inspectorate following agreement with the public health authority.

THE BASIC/FUNDAMENTAL PRINCIPLES

For the area of labour law relations are important basic principles, which are included in the 11 articles in the initial part (non-normative) of the Labour Code. [108] The principles are concerning the fundamental rights and obligations of the employment relationship (for example employees' right to rest, the right to collective bargaining, and the right to judicial protection) and considered as interpretative rules.

---

[107] Barancová, H. In: Barancová, H., Schronk, R.: Pracovné právo. Bratislava, Sprint 2 s.r.o. 2012, p. 159-172.

[108] Barancová, H. In: Barancová, H., Schronk, R.: Pracovné právo. Bratislava, Sprint 2 s.r.o. 2012, p. 109 et seq.

One of the most important principles is the ***principle of equal treatment***. This principle is partly regulated by Article 1 of the basic principles of the Labour Code, in Section 13 of the Labour Code and in detail by Act No. 365/2004 Coll. Act on Equal Treatment in Certain Areas and Protection against Discrimination; this act regulates the principle of equal treatment in many areas (Antidiscrimination Act).

The employer is obliged to fulfilment the principle of equal treatment. In labour-law relations, discrimination shall be prohibited on the grounds of sex, marital and family status, sexual orientation, race, colour of skin, language, age, unfavourable health state or health disability, genetic traits, belief or religion, political or other conviction, trade union activity, national or social origin, national or ethic group affiliation, property, lineage or other status.

The enforcement of rights and obligations arising from labour-law relations must be in compliance with good morals. Nobody may abuse such rights and obligations to the damage of another participant to a labour-law relation, or of co-employees. In the workplace, nobody may be persecuted or otherwise sanctioned in the performance of labour-law relations for submitting a complaint, charge or proposal for the beginning of criminal prosecution against another employee or the employer.

The employee, who assumes that his/her rights or interests protected by law were aggrieved by failure to comply with the principle of equal treatment, may have recourse to a court and claim of legal protection in accordance with Antidiscrimination Act.

Questions

1. Please, describe labour-law relationships.
2. Please, describe employment relationship.
3. Please, describe the object of the employment – depend work.
4. The subject of employment relationship.
5. The acting on behalf of the employer.
6. Please, briefly describe the principle of equal treatment.

2. CREATION, CHANGE AND TERMINATION OF EMPLOYMENT

The **employment relationship** is a legal relationship of obligation in which the natural person voluntarily, in accordance with the contract performs dependent work for an employer for remuneration. This work is defined as some type of work and it is performed according to the instructions of the employer.

Dependent work is performed in a relationship where the employer is the superior and the employee is subordinate, personally by the employee for the employer in accordance with the employer's instructions, in the employer's name, for remuneration, during working time settled by the employer.

The dependent work shall be performed only in the employment relationship, similar labour-law relationship or exceptionally in other labour-law relationship in accordance with the rules laid down by Labour Code.

Dependent work shall not be done in a civil contractual relationship or contractual relationship commercial law which is regulated by special regulations.

Pre-contractual obligations

In accordance with Section 5 (1) of the Labour Code the labour-law relations shall be established at the earliest upon conclusion of an employment contract or agreement on work performed outside an employment relationship unless stipulated otherwise by the Labour Code or a special regulation.

The Labour Code provides otherwise in the case of pre-contractual relations (Section 41 of the Labour Code), which are considered as labour-law relations (although they are created prior to entering into an employment relationship).

The ("future") employer and the natural person (job seeker) have information obligations.

The employer is:

- obliged to inform a natural person on the rights and obligations arising from a contract, with work and wage conditions under which the work is done;
- entitled from a natural person require only information related to the work to be performed, or require the submission of his employment advice, employment certificates;
- must not require information on pregnancy, family history and the political, trade union and religious affiliation, integrity (exception - if the work which is under a separate conditions and the special regulation requires integrity or the integrity is necessary due to character of requirements of work), if the performance of work requiring medical or mental fitness or other condition under a separate law, the employer may only enter into a contract with a person who is

so qualified and meets the necessary conditions;
- obliged - before entering into an employment relationship with an young employee - to request the opinion of its legal representative and may conclude with him/her a contract after the medical examination.

The employer has to fulfil the principle of equal treatment relating to access to the employment.

The job seeker is obliged to inform the employer on circumstances inhibiting the performance of work, or which may otherwise prove detriment to the employer and on the length of working time with other employer if concerning an adolescent.

2.1 Creation of employment

In accordance with Section 42 of the Labour Code an employment relationship can be established only on the basis of a written employment contract between an employee and an employer. Due to the protection of employees, failure to conclude an employment contract in writing does not cause invalidity of the employment relationship.

If a written contract of employment is not concluded, it is a violation of labour laws, for which the employer could be penalized by the labour inspectorate, breach of written employment contracts, however, does not invalidate employment contract and employment relationship.

Employment pursuant to Section 46 of the Labour Code arises from the day, which was agreed in the contract as the date of commencement of employment.

EMPLOYMENT CONTRACT[109]

In the employment contract the natural person and the employer both agree on essential conditions of the performance of the paid work, and also other conditions in which they are interested and which are allowed by labour laws to be agreed on. In the employment contract it is not necessary to agree on all conditions for paid employment.

The Labour Code in its Section 43 provides the content requirements of the employment contract and distinguishes among its essential, regular and other content requirements.

To be valid the established employment, the employer must agree with the employee in the employment contract on essential conditions, and these are type of work, place of work, the date of commencement of employment and remuneration conditions.

Range of the employer´s dispositional authorization depends on the type of work agreed in the contract.

Essential content requirements:
- **type of work** and its brief description, by defining the type of work the employer determines the scope of work that s/he can require from the employee.
- **place of work** – a municipality, part of a municipality or other designated loca-

[109] Barancová, H.: Zákonník práce. Komentár. 2. vydanie. Praha, C.H. Beck 2012, p. 329-388.

tion, for example, employer's office, a district, county, region
- **the date of commencement of employment:** is the day since which the employee is engaged in work activities,
- **remuneration conditions**: are agreed by contractual parties depending on difficulty of performed work and responsibility which it requires. Remuneration conditions must be agreed in the contract if they are not covered by collective agreement.

In addition to essential content requirements, the employer is required to cover also regular elements, and it is the pay period, working hours, annual paid leave and the length of the notice period.

In the employment contract the parties **may** also agree on the **additional content requirements**:

- the probationary period must be agreed in a written employment contract, and the maximum length of the probationary period is three months; otherwise, the probationary period is invalid. For the employees who are managerial employees in the first and second line under the statutory representatives[110], the maximum length of the probationary period is six months. The probationary period may not be prolonged, but periods of obstacles to work on the part of the employee.
- Duration of employment – for indefinite term, for fixed term;
- Competitive clause;
- Agreement on posting for a business trip,
- Different working time arrangements (flexitime, or other distributions of working time);
- Agreement to improve the employee's qualifications, the indemnity agreement, a written confirmation of assignment of objects, agreement on wage deductions;
- If the place of work is abroad – duration of the performance of employment in a foreign country, the currency in which the payment is made, other requirements related to the performance of work, the conditions of the employee's return from abroad;
- Other tangible benefits – use of business phone and car.

The fixed term employment relationship

The Section 48 of the Labour Code establishes conditions, under which conclusion of *the employment relationship for a definite time* is possible.

The employment relationship shall be agreed for an indefinite period, if the duration of employment is not defined explicitly in the employment contract or if the agreement was amended and the conditions for fixed-term employment to enter into force were not met.

The employment relationship shall also have indefinite duration if a fixed term employment relationship was not agreed in writing.

The fixed term employment relationship may be agreed for at most two years. A

[110] The managerial employees under the direct managerial competence of a statutory body or a member of the statutory body, and managerial employees who are under the direct managerial competence of these managerial employees.

fixed

term employment relationship may be extended or renewed at most two times within a two year period.

A renewed fixed term employment relationship is an employment relationship beginning less than six months after the end of the previous fixed term employment relationship between the same parties.

A further extension or renewal of the fixed term employment relationship to two years or over two years can be agreed only in the following reasons

a) substitution of an employee during maternity leave, parental leave, leave immediately linked to maternity leave or parental leave, temporary incapacity for work or an employee who has been given long term leave to perform a public function or trade union function,
b) the performance of work in which it is necessary to increase employee numbers significantly for a temporary period not exceeding eight months of the calendar year,
c) the performance of work that is linked to the seasonal cycle, which repeats every year and does not exceed eight months in the calendar year (seasonal work),
d) the performance of work agreed in a collective agreement.

The reason for extension or renewal of a fixed term employment relationship shall be stated in the employment contract.

The further extension or renewal of an employment relationship for a fixed term of up to two years or over two years can be agreed with a teacher in higher education or a creative employee in science, research or development if there are objective reasons relating to the character of the activities of the teacher in higher education or creative employee in science, research or development as stipulated in special regulation.

Part- time employment relationship

Although the Labour Code does not explicitly regulate the employment contract for a shorter working time, permissibility of such a contract unanimously arises from Section 49 of the Labour Code. The Labour Code enables an employer to agree with an employee in the employment contract *on a shorter working time than the established weekly working time.*

The other activity

Under Section 50 of the Labour Code, the employer may agree on several employment relationships with the same employee only for *activities relating to the work of another type*, the rights and responsibilities arising of these employment are considered separately.

Homework / telework

According to the Section 52 of the Labour Code the employer can agree the employee will perform his/her work *at home* or at another place i.e. the place of work is the address of the employee's permanent/temporary address. If an employee performs paid work for the employer in combination with an unusual place of work and *use of information and communication technologies,* it is a new form of employment, a

so-called teleworking.

An employment contract of such a special employee category – employees at home and teleworking employees, contains the same content terms as in typical employment contracts. Considering the employees work at time and place that suits them better, they organize their working activity by themselves and make their own schedule, pursuant to the Labour Code, Section 52 (1), they are not applicable to detailed established provisions of the Labour Code (e.g. such employees are not entitled to overtime salary, salary benefits for work on a bank holiday, salary benefit for night work and salary compensation for obstructed performance of work).

A home employee/teleworking employee works usually by himself, organizes his/her own working time, therefore pursuant to the Labour Code, Section 52 (3), the employer should secure such measures that would prevent the total isolation of the employee and offer him/her a possibility to meet the other employees.

The employment contract with work agency[111]

Agency work[112] is characterized as the so-called triangular legal relationship, within which *the employee is employed by the agency with which s/he has concluded the employment contract and s/he is subsequently "hired" by labour-law and/or commercial-law contract between the agency and the user employer to perform certain work for the user employer.*

In Section 58 of the Labour Code there is provided the temporary assignment of an employee to the user employer through a *temporary employment agency* (the so-called agency work) or through actual *employer (but only if he/she has objective operational reasons* (according to Section 58a (1) of the Labour Code)).

If an employee is temporarily assigned to a user employer by a temporary employment agency, this agency is in the legal position of the employer, it concludes with the employee an employment contract (fixed-term or indefinitely), in which it guarantees to provide for the employee performance of a temporary employment in the user employer.

In the event that the contract is concluded for fixed term, it is necessary to agree on certain detailed conditions for temporary assignment under Section 58 (3) of the Labour Code.

According to Section 58 (10) of the Labour Code, the temporary assignment ends with the expiry of the period for which it was agreed, the assignment can be ended also before that time by the agreement between parties of the employment or by a unilateral termination on the basis of agreed terms.

During the period of assignment the user employer in behalf of temporary work agency requires from temporarily assigned employee certain work assignments, gives him/her instructions, creates favourable conditions of work, and ensures safety and health at work as for their regular employees, but the user employer cannot make any legal actions against the temporarily assigned employee. During the temporary assignment the wage, wage compensation and travel expenses are provided to the employee by temporary employment agency which has temporarily assigned the em-

[111] Barancová, H.: Zákonník práce. Komentár. 2. vydanie. Praha, C.H. Beck 2012, p. 413-420.

[112] Slovak Labour Code uses the term - temporary assignment of employee.

ployee.

According to Section 58 (5) of the Labour Code *working conditions and conditions of employment* of the temporarily assigned employees must be at least *as favourable as* those for comparable employees of the user employer.

Under Section 58 (6) of the Labour Code as working conditions and conditions of employment there are considered working time, remuneration conditions, health and safety at work, compensation for accidents at work or occupational disease, compensation in case of insolvency and protection of rights of temporary workers, maternity and parental protection, right to collective bargaining and dining services.

At the same time it is necessary to conclude an agreement on temporary assignment between temporary employment agency and the user employer under Section 58a of the Labour Code. The agreement must be concluded in writing under the sanction of nullity and must contain an exact and explicit list of requirements (data about the assigned employee, type of work, duration of assignment, etc.).

Section 58a of the Labour Code requires conclusion of a special agreement of temporary assignment between the temporary assignment agency and the user employer.

Concluded between the temporary employment agency and the user employer, the contract of temporary assignment must be in writing, otherwise is invalid, and must contain the following detailed particulars:

a) name and surname, date and place of birth and place of permanent residence of the temporarily assigned employee;
b) type of work the temporarily assigned employee is to perform, including requirements for medical fitness, mental fitness for work or other prerequisites as per special act, if required for such a type of work;
c) term of the agreed temporary assignment;
d) place of work;
e) date of the commencement of the assigned employee for work at the user employer;
f) working conditions, including wage conditions, and conditions of employment of the temporarily assigned employees that must be equally favourable as for a comparable employee of the user employee, unless this Act establishes otherwise;
g) conditions under which the employee or the user employer can terminate the temporary assignment prior to expiry of the term of temporary assignment;
h) number and date of decision by which the temporary employment agency was granted a permission to mediate the employment.

In the practical application the temporary employment agency concludes with the user employer also a commercial contract that governs especially financial conditions of the temporary assignment of the employee.

The employment relationship of young (juvenile) employee

Due to the need for increased protection of juvenile employees (employees under 18 years of age) and its development the Labour Code governs the special nature of their employment (section 171 – 176 of the Labour Code).

The employer can employ a juvenile employee only to perform works that are ap-

propriate to their physical and mental development and does not endanger their moral values. As for the commencement either for the termination of employment there is necessary the participation of their legal representative (statement in the establishment of employment, information on termination of employment).

The employer must ensure that the employee be examined by a doctor - before assignment to other work - regularly, or as required, but at least once a year (unless stipulated otherwise).

Working time of a juvenile employee is up to 37 ½ hours a week (for minors to 16 years of age up to 30 hours). Attention: if the minor works for more than one employer at the same time, the working hours are counted up.

The employer is not allowed to:

- employ a juvenile employee for overtime work, night work (except in the case of vocational training for workers aged 16 and over, if the night work does not exceed more than 1 hour) either order him/her or agree on on-call duty,
- use such a method of remuneration, which could lead to a threat to the safety and health of employees, if they increased job performance,
- assign a juvenile employee such a work that is forbidden for minors (provided for in the Labour Code and in special regulation - Government Ordinance no. 286/2004 Coll.) or which s/he is unable to perform because according to medical opinion this work endangers his/her health (if the employee has necessary qualification for the job, but is unable to perform it, the employer must order him/her another appropriate work which would correspond as closely as possible to his/her qualification until s/he can perform it again).

The employment relationship of women

In general, the employer has an obligation to provide social facilities and facilities for personal hygiene of women.

Only women in accordance with their care for children have special protection. Obligations of the employer in the employment of *pregnant women, mothers until the end of 9th month postpartum and breastfeeding women, women caring for children* (Section 160 -170 of the Labour Code):

- when assigning work the employer must take account of the needs of pregnant women and of women caring for children,
- to modify working conditions, if a woman (pregnant, breastfeeding mother or mother until 9th month) performs works that are prohibited for her or according to medical opinion endanger her health,
- to agree (if serious operational reasons shall not obstacle it), if a pregnant woman or a woman constantly caring for a child younger than 1 year, asks for an appropriate regulation of the working hours,[113]
- to employ for overtime work and performance of on-call duty in case of pregnant women, women which are constantly caring for a child younger than 3 years, or single women permanently caring for a child younger than 15 years only with their consent (this also applies to women caring for a close person which is immobile and is not placed in an institution where there is provided

[113] Note: The employee - a man caring for children has the same status.

care for such a person),[114]

- Termination of employment - Protection of pregnant women and women on maternity/ parental leave, single women (if caring for a child younger than three years),
- Prohibition to employ mothers until 9th month after birth, pregnant women and breastfeeding mothers for work that:
  - according to medical opinion endangers her pregnancy, her health for health reasons inherent in her person
  - is prohibited or is associated with specific risks (is inappropriate or harmful to the woman´s organism) - Government Ordinance no. 272/2004 Coll.

The employment relationship of disabled person

Due to the improved protection of employees – of persons with disabilities, the employer is obliged to (Section 158-199, Section 66 of the Labour Code):

- employ the employee in appropriate working conditions,
- provide him/her training or study by which s/he can obtain the necessary qualification, take care of improving his/her qualification
- guarantee such conditions to the employee to have the possibility of career, improve the equipment of workplaces in order to achieve, if possible, the same working results as the other employees and make the performance of their work much easier,
- negotiate with employee representatives employment policies for people with disabilities and the conditions of care for them,
- dismiss the employee only with the prior approval of the Office of Labour, Social Affairs and Family.

Pursuant to the Section 40 (8) of the Labour Code a disabled employee, for the purpose of the Labour Code, is an employee with a proclaimed disability pursuant to a special regulation (Act No. 461/2003 Coll. on Social Insurance) and he/she submits to the employee a decision on disability pension.

The employer's duty to employ disabled persons is regulated by a special regulation – Section 62 - 65 of the Act No. 5/2004 Coll. on Employment Services.

Pursuant Section 9 (1) of the Act on Employment Services a disabled person, for the purpose of this Act, means a person recognized as a disabled person according to a special regulation (Act No. 461/2003 Coll. on Social Insurance) and a person with reduced ability to perform a paid employment by 20%, however, not more than by 40% according to a special regulation (Act No. 461/2006 Coll. on Social Insurance).

Pursuant to the Act on Employment Services, if an employer employs at least 20 employees, he is obliged to employ disabled persons (if registered at the respective employer's Office of Work, Social Affairs and Family), in the ratio amounting to 3.2% of the total employees.

In case the employer is not able to employ such persons, he can fulfil his duty by a substitute fulfilment, namely by ordering a job from disabled persons (the employer orders a job from a protected workshop, e.g. to make working clothes). If the employer fails to fulfil this duty, he is obliged to pay for each such a missing disabled person a

[114] Note: The employee - a man caring for children has the same status.

levy.

The employment contract with foreigners and the posting of workers[115]

Free movement of workers allows the citizens of the EU to employ without any restriction in any EU Member State. An employee who decides to employee in another EU Member State concludes a new employment contract with the employer and he/she does not need a residence permit or a work permit. Free movement of workers does not mean that citizens of other EU Member States do not have to meet some administrative duties in relation to the competent authorities of the EU Member State where the work is done.

The employees from third countries it is necessary (some exceptions exist) that they must have a temporary residence permit issued by policy and a work permit issued by labour office.

In connection to the global migration and to the differentiation between the posting of workers and employment of foreigners, the Labour Code regulates typical employment of the foreigners in the Section 5 (1) of the Labour Code (employment of foreigners in the Slovak Republic or employment of Slovakian by foreign employer).

The posting of workers is part of **free movement of the services.** The posting of workers is regulated in the Section 5(2 – 6) of the Labour Code, which regulates ***posting of the workers from the EU member state to the Slovak Republic.***

Labour-law relations of employees who are posted by their employers for the performance of work to other employers from a European Union Member State territory to the territory of the Slovak Republic shall be governed by this Act (i.e. Labour Code), special regulations or a relevant collective agreement, and which regulate ("hard core" of working conditions):

a) the length of the working time and rest periods,
b) the length of vacation,
c) minimum wage, minimum wage claims and overtime wage,
d) health and safety at work,
e) working conditions for women, juvenile and employees caring for children younger than three years of age,
f) equal treatment for men and women and a prohibition of discrimination,
g) working conditions of temporary agency work.

The working conditions of hard core are granted to the posting workers in accordance with Directive 96/71/ES.

The principle of favourable for the employees must be observed. If the legislation of the sending Member State of the EU has been more beneficial and better regulate working conditions, employment legislation as the Slovak Republic, then the favourable legislation of the sending Member State of the EU shall apply.

Agreements outside employment relationship

Except for the employment relationship, another basic labour-law relations are those created upon agreements to work outside the scope of employment. For these purposes the Labour Code provides three types of agreements, which should be con-

[115] Barancová, H.: Zákonník práce. Komentár. 2. vydanie. Praha, C.H. Beck 2012, p. 112 et seq.

cluded with respect to ***an occasional work or a small-scale work***.[116]

The agreements to work outside the scope of employment relationship must be concluded in writing, otherwise they are not valid. These agreements should not cover a regularly repeated activity, but only an occasional activity.

The labour-law relationships established by the agreements to work outside the scope of employment relationship are not subject to the all provisions of the Labour Code relating to the employment relationship. Thus, *the employees working under the agreements to work outside the scope of employment relationship are not entitled to all rights arising from the employment, e.g. vacation, catering, etc*.

There are only some of the provisions of the Labour Code applicable to the agreements to work outside the scope of employment relationship, and these provisions are the provisions of the first (general) part of the Labour Code, the provisions pertaining the prohibited works for women (Section 161) and juveniles (Sections 173 and 175), general liability of the employee (Section 179 – 191) and general liability of the employer (Section 192 – 221), with specifications indicated in Section 225 of the Labour Code; Section 85 (1, 2), Section 90 (10), Sections 91 - 95, Section 98, Section 119 (1) and the sixth part of the Labour Code. The working time of the employees cannot exceed 12 hours during 24 hours (8 hours for juvenile employees). The employer is not obliged to order or to agree stand by duty and overtime work. The employer justifies the absence of work during personal obstacle to work of the employee.

The Act No. 252/2012 Coll. amending act No. 461/2003 Coll. on Social Security Insurance and certain other acts (inter alia, Act on Health Insurance and the Labour Code), effective from 1.1.2013.

The Amendment resolved application problems regarding the status of students performing work under agreements on temporary job of students. According to the new regulation, an employer may conclude an agreement on temporary job of students only with person who has status of student of a secondary school or full-time university student. A student may perform work under the agreement on temporary job of students until the end of the calendar year in which he/she reaches 26 years of age.

The most significant change brought by the Amendment is that deductions for social security insurance contributions will also be mandatory from payments received for work performed under agreements on performance of work, agreements on working activity, as well as agreements on temporary job of students, i.e. outside the employment relationship.

Until the end of 2012 employees do not participate in contributions for their social insurance, i.e. social insurance contributions for employees are paid only by employers and only to a limited extent (guarantee and casualty insurance). The monthly amount of social insurance contribution for an employee is currently 1.05% of the employee's assessment base.

From 1.1.2013 the social insurance contributions will be paid in full extent by employers as well as by employees, i.e. in the same way as in case of ordinary employment relationship under the employment contract. Moreover, in determining the amount of social insurance contributions it is necessary to consider also the regularity of payments (remuneration) received for the performed work. Certain exceptions apply to

[116] Barancová, H.: Zákonník práce. Komentár. 2 vydanie. Praha. C.H. Beck 2010, p. 905.

students and retirees whose social insurance contributions may be lower depending on specific circumstances.

Agreement on performance of work

Characteristic feature of agreements on performance of work is that they relate to work which is defined by its result, an individual work assignment. An agreement on performance of work must precisely define the work assignment, remuneration for its completion, the deadline for completing the assignment and the anticipated scope of assignment unless this results directly from the work assignment.

The envisaged extent of work (assignment) covered by the agreement on performance of work may not exceed 350 hours in a calendar year. This extent also includes work carried out by the employee for the same employer under another agreement on performance of work.

Agreement on working activity

Agreements on working activity may be concluded in relation to work that must be defined in terms of the type of work. The extent of a working activity must not exceed 10 hours per week.

Agreements on working activity must meet the essentials required by law, namely specify the type of work to be performed, remuneration for performed work, length of the working time, and the time period for which the agreement is concluded (indefinite/definite).

Agreement on temporary work of student

Agreements on temporary work of students may be concluded only with natural persons that have the status of students. An agreement on temporary work of student is concluded for performance of regularly repeated work of a specified type.

An agreement on temporary work of student must meet the p essentials required by law, i.e. the type of work, remuneration, length of working time and the time period for which it is concluded. An inseparable part of the agreement is a student status certificate.

Maximum extent of work that may be agreed under this type of agreement is 20 hours per week. Compliance with maximum working time is assessed in respect of the entire duration of an employment relationship, but for not more than 12 months.

Agreements on working activity and agreement on temporary work of student may be terminated in several ways. The agreement itself may explicitly set out the manner of its termination; immediate termination can be agreed only if there are grounds justifying immediate termination of the employment relationship. If an agreement on working activity does not provide for the manner of its termination, it can be terminated by mutual agreement or unilaterally by means of a written notice without cause; in the latter case, the 15-day notice period starts running as from the date of service.

2.2 Change of the employment[117]

Change in the content of the employment

The change in content can occur on the basis of these circumstances:

[117] Barancová, H. In: Barancová, H. a kol.: Pracovný pomer a poistný systém. Bratislava, Veda a Typi Universitatis Tyrnaviensis 2008, p. 238 et seq.

- **Agreement on the Change in Working Conditions** (Section 54 of the Labour Code) - if the employer and employee agree on the change in working conditions and in the content requirements agreed in the employment contract (the employer is obliged to conclude the change of employment contract in writing).
- **Transfer to another job** (Section 55 of the Labour Code) - a unilateral legal act by the employer towards a change in the type of work or place of work, different from that agreed in the employment contract.

The employer **is obliged** to transfer an employee to another job if:

- employee lost due to their health condition (medical report) capacity to perform previous work for a long period of time or can not perform it for occupational disease or risk for the disease, or if s/he has reached maximum permissible exposure at the workplace (according to the report of the competent public health authority),
- pregnant woman or mother of a child younger than nine months performs work, which is prohibited for such women or which according to medical opinion endangers her pregnancy or maternity role,
- it is indispensable according to medical opinion or decision of the state administration in the field of public health in order to protect the health of other persons against communicable diseases (hereinafter referred to as "quarantine measure")
- it is indispensable due to the final decision of a court or other competent authority,
- employee working at night is on the basis of medical opinion declared unable for night work,
- pregnant woman or mother of a child younger than nine months working at night asks for transfer to daytime work.

The work for which the employer transfers an employee *must comply with his/her fitness* for work and comply with the agreed type of work. The employer is obliged *to take into consideration* the fact that this work be suitable for the employee due to his/her skills and qualifications.

The employer ***can*** transfer an employee also without his/her consent, for the time strictly necessary for other work then agreed, if it is necessary to avert an emergency or to mitigate its immediate effects.

- **Business Trip** (Section 57 of the Labour Code) – is time-limited change in the agreed place of work (but within the agreed type of work). The employer may post the employee on a business trip outside the district of the municipality where is the regular workplace or outside the residence of the employee for necessary period of time only with his/her consent (this does not apply if posting on a business trip follows directly from the nature of the agreed type of work or place of work or if the possibility of posting for a business trip is agreed in the employment contract).
- **Temporary Assignment** (Section 58 and 58a of the Labour Code) - employer or temporary employment agency (its status is regulated by the Act. 5/2004 on Employment Services) may agree in writing with the employee to be temporarily assigned to work for another legal or natural person (hereinafter "the user employer").

Temporary assignment is typical for these relationships:

1. employment contract between the temporary employment agency and the employee (the agency commits to ensure for the employee a temporary performance of employment at the user employer and conditions of employment are also agreed)
2. Written agreement on temporary assignment between the employer and employee
3. Written agreement between the employer / temporary employment agency and the user employer.

The employer and the user employer can agree on a temporary assignment of an employee only if the employer has objective operational reasons (lease of the employees). There is not an employment relationship between an employee and an employer to which is the employee temporarily assigned; it is a employment relationship sui generis. According to the temporary assignment, the employee is obliged to follow the instruction of his/her temporary "employer".

A temporary employment agency is entitled for the temporary assignment of employees for work performance to another employer, too; such an agency employs the person in the employment only for the purpose of temporary assignment to a user employee (false lease).

The principle of equal treatment to the temporarily assigned employees and the comparable employees of the user employer is applicable in its full extent only if the sending employer is the so-called real employer. An exception applies to the temporary employment agency saying the wage conditions of the temporary assigned employee do not need to be as equally favourable, if such an employee has been fulfilling tasks of a user employer for less than three months.

Change in the entity of the of employment (the change of subject of employer) Transfer of a company

If an employer who has a legal successor, ceases to exist, the rights and obligations of the employment relationships are transferred to this successor (general succession of rights and duties), unless stipulated otherwise. Transfer of rights and duties of the employment relationships is regulated by Sections 27-31 of the Labour Code.

If the ***economic entity*** is transferred which for the purpose of the Labour Code is the employer or the employer's part, or if a task or the employer's business is transferred or any part thereof to another employer, the rights and obligations under employment contracts to the transferred employees are transferred to the transferee employer.

The transfer is the transfer of the economic unit, which retains its identity as an organized grouping of resources (tangible assets, intangible components and personal folders), which aim is to carry out an economic activity, regardless of whether this activity is or not central or complementary.

The transferor is a legal entity or natural person who by a transfer ceases to be an employer and transferee employer is a legal entity or natural person, who by the transfer continues as an employer to the transferred employees.

The rights and obligations of the former employer to the employees, whose employment relationships ended before the transfer date, shall remain unaffected.

The employer (transferor and transferee) is required no later than one month before there is a transfer of rights and obligations of employment relations, to inform in writing the employees´ representatives, and if there do not operate any employees´ representatives at the employer, directly the employees about:

a) the date or proposed date of the transfer,
b) the reasons for transfer,
c) employment, economic and social consequences of transfer for employees,
d) the planned measures of transfer affecting the employees.

At the same time, the employer is obliged to reach an agreement no later than one month before s/he takes measures affecting the employees and also to discuss these measures with employees' representatives.

ways of transfer:

- by death of the employer who is a natural person to his heirs
- by sale
- by renting
- by cancellation (the employer is required to satisfy the claims of employees of the cancelled employer or exercise rights of the cancelled employer; if it realizes liquidation, the liquidator has a duty to satisfy the claims of the employees of the cancelled employer)

If there is a transfer of rights and obligations under the employment relationships, the employer is obliged to comply with collective agreements negotiated by former employer and up to the end of its effectiveness; also the status and function of employees' representatives shall be maintained unaffected until the end of the term, unless agreed otherwise.

The rights and obligations arising from employment relationships are transferred by the death of the employer, who is a natural person, to his/her heirs.

2.3 Termination of employment[118]

Watershed for each employee and each employer is the moment of termination of employment that is why the Labour Code governs in a mandatory way the terms of termination of employment.

The ways of terminating an employment relationship are exhaustively determined in the Labour Code. According to Section 59 of the Labour Code, employment relationship may be terminated by virtue of

a) **a legal act**, namely
- agreement,
- notice,
- immediate termination,
- termination during the probationary period;

b) **a legal event**, such as

[118] Hodálová, I.. In: Barancová, H. a kol.: Pracovný pomer a poistný systém. Bratislava, Veda a Typi Universitatis Tyrnaviensis 2008, p. 236 et seq.

- lapse of the agreed-upon period, or
- death of employee;

c) **official decision** (e.g. in case of employment relationship of foreign nationals);

AGREEMENT ON TERMINATION OF EMPLOYMENT RELATIONSHIP

The simplest way of dismissal is termination of employment by agreement. According to Section 60 of the Labour Code, the agreement should be concluded in writing; however, if it is agreed orally, such an agreement is also valid.

Employment relationship shall terminate under the Agreement **on the date** on which the employer and employee **agreed**.

However, the agreement must include the reasons why the parties decided to terminate the employment relationship and it is in the case when the employee requests that these reasons be given or when the employment ends for organizational reasons or for the employee's disability.

NOTICE OF DISMISSAL

The most commonly used method of the termination of employment is notice of dismissal. Either employer or employee may terminate the employment by the notice of dismissal. Employee can terminate employment by notice for any reason or without giving any (Section 67 of the Labour Code). Employer may give notice to an employee solely for the reasons expressly provided by the Labour Code (Section 63 of the Labour Code).

There must be complied with all the conditions enshrined in Section 61 of the Labour Code, to consider the notice as valid, i.e. notice must be:

- **written;**
- **received** by the other party of employment (employee in person); and
- in the notice by the employer there must be factually defined **the reason** of the dismissal (the reason cannot be subsequently changed).

In the case of notice of dismissal**, the employment ends only by the end of the notice period,** not by the delivery itself. The notice period starts from the first day of the calendar month following the delivery of notice and ends on the last day of the corresponding calendar month.

The ordinary notice period is at least one month unless otherwise provided by the Labour Code. The notice period lasts for at least two months, if the employment on the date of receiving notice lasted at least one year. If the notice is given by the employer for organizational (economic) reasons specified under Section 63 (1) a) or b) of the Labour Code or for the reason due to the long-term health disability of the employee to perform the agreed-upon work the notice period is at least three months, if the employment to the date of receiving the notice lasted at least five years.

A longer notice period can be negotiated in a collective agreement or in the employment contract.

The employer may (it is up to him/her whether to apply the notice) to give notice to an employee **only for reasons** which are exhaustively provided in Section 63 (1) of the Labour and must factually describe and specify the reason for notice.

The employer may give notice to an employee only for the following reasons: if

a) the employer or part thereof

1. ***ceases to exist*** or

2. ***relocates*** and the employee disagrees with the change of the agreed place of work,

b) ***the employee becomes redundant*** in view of the written decision of the employer or of the competent authority due to the change of the employer´s tasks, technical facilities or staff reduction in order to ensure the effectiveness of the work or due to other organizational changes,

c) ***the employee due to his/her health condition, according to medical opinion lost the ability to perform previous work for long term***, or s/he is not allowed to perform it for occupational disease or risk for the disease, or if s/he has reached maximum permissible exposure at the workplace determined by decision of a competent public health authority,

d) employee

1. ***does not meet the requirements*** stipulated by regulations for the performance of the agreed work,

2. no longer meets the requirements under Section 42 (2) of the Labour Code,

3. without fault of the employer, does not meet the requirements for the proper performance of the agreed work, which were stated by the employer in an internal regulation,

4. ***does not complete the work task in a satisfactory way*** and the employer has required him in writing in the last six months to remove this deficiency and the employee has not removed it within a reasonable time,

e) There are certain reasons for the employee for which the employer could immediately terminate the employment, or for a ***less serious breach of labour discipline***; it is possible to give notice to an employee for a less serious breach of labour discipline when s/he has been informed about the possibility of dismissal in respect of the violation of labour discipline in writing in the last six months.

However, if the employer wants to give the employee a notice of dismissal for breach of labour discipline, s/he can do so only within 2 months from the date when he became aware of the reason for dismissal (the so-called subjective time), but no later than 1 year from the date when the reason for dismissal occurred (the so-called objective time).

In addition, the employer is obliged to inform the employee of the reason for such a dismissal and allow him/her to express opinion about this reason.

In the case of notice by the employer, there is necessary to comply with other special conditions (otherwise the notice is invalid):

1. in certain cases, the employer ***must offer the employee another suitable employment (job)*** before s/he gives him/her the notice of dismissal. (Section 63 (2) of the Labour Code)
2. the notice of dismissal ***must be negotiated*** and approved by the employees´ representatives (Section 74 and 270 of the Labour Code)
3. notice of dismissal may be given to persons with ***disabilities only after prior approval*** of the Office of Labour, Social Affairs and Family (Section 66 of the Labour Code).

The employer **is not allowed to give notice of dismissal to the employee during the protected period** (Section 64 (1) of the Labour Code), for example, during employee´s temporary incapacity for work, at the time when an employee is pregnant or on maternity leave or when the employee is on parental leave or when employee - single parent is caring for a child younger than three years, or at the time when the employee is released for a long time to exercise a public function.

The prohibition of dismissal does not apply absolutely, i.e. even if the employee is in the protected period, his/her employer may give him/her the notice (Section 64 (3) of the Labour Code).

An employee may decide to terminate the employment by notice at any time during the duration of employment. S/he can give the notice to the employer for any reason or simply for no reason.

IMMEDIATE TERMINATION OF EMPLOYMENT

The employment ends immediately, i.e. in the moment of delivery of immediate termination of employment.

Either employer (Section 68 of the Labour Code) or employee (Section 69 of the Labour Code) is allowed to immediately terminate the employment relationship for the reasons set out in the Labour Code.

In order to immediately terminate the employment in a valid way, there must be complied with all the conditions enshrined in Section 70 of the Labour Code, i.e. the immediate termination of employment shall be:

- **in writing**
- **delivered** to the other party of the employment relationship (employee in person)
- must be delivered in a **stated period of time**
- must contain a factually defined **reason** of termination of employment (the reason can not be subsequently changed).

The employer may, exceptionally, immediately terminate the employment only if there are any of **the following reasons**:

- If an employee has been ***finally convicted of an intentional crime*** (there is necessary final conviction, only the fact that the employee is charged with a crime, or remanded in custody, is not sufficient); or
- If the employee has ***seriously breach the labour discipline.***

The employer can immediately terminate the employment relationship with the employee *only within 2 months* from the date when s/he became aware of the reason for immediate termination, but *not later than 1 year* from the date when that reason occurred.

The employer must pay attention to the type of employee with whom s/he **may not** immediately terminate the employment relationship (e.g. pregnant employee, male / female employee on parental leave, employee who is personally caring for a close person who is a person with a severe disability.)

The employer must discuss the immediate termination of employment with the employees´ representatives (Section 74 of the Labour Code), in the case of an employ-

ee who is also the representative of the employees, the immediate termination of employment must be approved by the employees' representatives (Section 240 of the Labour Code), and otherwise the immediate termination would be invalid.

An employee may immediately terminate the employment, if there are the following reasons (if their employer violates certain obligations):

- If the employee, according to ***medical opinion***, can no longer perform work without a serious threat to his/her health and the employer did not transfer him/her to another for appropriate work ***within 15 days from the date of submission of this report***;
- If the employer ***did not pay to the employee remuneration, wage compensation,*** travel expenses, compensation for standby duty, reimbursement for temporary sick leave or any part thereof ***within 15 days after the due date;***
- the employee´s ***health or life is directly endangered***;
- a ***juvenile employee*** can immediately terminate the employment also if s/he can not perform their work without ***risk to his/her moral values***.

The employee *must comply with the time limit* within which s/he may apply immediate termination of employment, if the deadline is not respected, and then it cannot be applied. S/he can immediately terminate the employment relationship *only within 1 month* from the date when s/he became aware of the reason for immediate termination.

An employee usually chooses the immediate termination of employment if the employer violates their basic obligations (does not pay wages), for this reason the Labour Code approves for such an employee as a certain satisfaction a ***wage compensation claim*** in the amount of average monthly earnings per employee for a notice period of ***2 months***, i.e. amount of wage compensation is equal to 2-month average earnings.

TERMINATION OF EMPLOYMENT DURING THE PROBATION PERIOD

In accordance with Section 72 of the Labour Code during the probation period either employer or employee can terminate the employment **for any reason or no reason**.

The employer may terminate the employment on probation with a pregnant woman, the mother until the ninth month after birth and breastfeeding woman only in writing, in exceptional cases not connected with her pregnancy or maternity, and must be duly justified in writing, otherwise it is invalid.

The Labour Code requires that the written notice of termination of employment be received by the other contractual part at least three days prior to the date when the employment is terminated (if this deadline is not respected, there is still a valid termination of employment).

TERMINATION OF EMPLOYMENT FOR FIXED TERM

Employment concluded for **fixed term** ends with the **expiry of this time** - the termination of employment occurs without any legal act to be realized to end the employment by the employment participants (Section 74 of the Labour Code).

If the employee continued to perform the employment also after the expiry of

this period, the fixed-term employment changes to the employment for an indefinite period.

2.4 Other Institutions

SEVERANCE PAY

In accordance with section 76 of the Labour Code the employee will be entitled to mandatory severance pay if his/her employment is terminated ***by notice or by agreement*** due to (i) ***organisational reasons*** (the employer or its part ceases to exist or is relocated, or the employee becomes redundant) or (ii) ***employee's health incapacity to perform his/her work (confirmed by a medical opinion).***

If the employment is terminated by notice, the minimum amount of severance pay is equal to:

a) employee's 1 average monthly earnings if the employment has lasted at least 2 years and less than 5 years,
b) employee's 2 average monthly earnings if the employment has lasted at least 5 years and less than 10 years,
c) employee's 3 average monthly earnings if the employment has lasted at least 10 years and less than 20 years,
d) employee's 4 average monthly earnings if the employment has lasted at least 20 years.

If the employment is terminated by agreement, the minimum amount of severance pay is equal to:

a) employee's 1 average monthly earnings if the employment has lasted less than 2 years,
b) employee's 2 average monthly earnings if the employment has lasted at least 2 years and less than 5 years,
c) employee's 3 average monthly earnings if the employment has lasted at least 5 years and less than 10 years,
d) employee's 4 average monthly earnings if the employment has lasted at least 10 years and less than 20 years,
e) employee's 5 average monthly earnings if the employment has lasted at least 20 years.

Mandatory severance pays may be increased e.g. by a collective bargaining agreement, an internal regulation or by an individual employment contract.

COLLECTIVE REDUNDANCY

A collective redundancy (Section 73 of the Labour Code) occurs if ***the employer terminates the employment relationship due to organizational reasons*** (i.e. cancellation, relocation of the employer or a part thereof) or ***due to redundancy*** of an employee or if the ***employment relationship terminates due to another reason that does not arise in the person of employee within 30 days***

a) of at least ten employees of an employer who employs more than 20 and less than 100 employees,

b) of at least 10% of total up expenses of employees of an employer who employs more

than 100 and less than 300 employees,

c) of at least 30 employees of an employer who employs more than 300 employees.

If the employer plans a collective redundancy:

- firstly he is obliged to fulfil his informative and consultancy duties towards the employees' representatives and the respective Labour Office;
- only then can he terminate the employment relationship with the involved employees.

At the latest ***one month prior to the commencement of the collective redundancy***, the employer is obliged:

- **to inform** the employees' representatives (if non-existent, then directly the involved employees) on the collective redundancy (on the reasons, number and structure of the dismissed employees, duration of the collective dismissal). The employer is obliged to submit a copy of the information to the Labour Office;
- at the same time, he is obliged **to discuss the measures** related to the collective redundancy (if non-existent, then directly the involved employees), aiming to come to an agreement. The employer is obliged to submit a copy of the information on the discussion results to the respective Labour Office.

It is only one month after the delivery of the information to the Labour Office that the employee can terminate employment relationships with the employees.

If the employer breaches his duties in relation to his social partner (or involved employee), the employee, with whom the employer plan to terminate the employment relationship, is entitled to compensation of salary in the amount of at least the double average monthly salary. It is a special type of satisfaction for the employee and a sanction for the employer that should mainly act as prevention for the employer in order to thoroughly fulfil all the legal duties related to the collective dismissal.

THE DISPUTES REGARDING INVALID EMPLOYMENT TERMINATION

In case of invalid termination of employment relationship by legal act - mutual agreement, during the probationary period or in case of immediate termination, both parties, i.e. the employer and the employee, have the right pursuant to Sections 77 – 80 of the Labour Code to file ***a court action within a two-month preclusive period claiming invalidity of termination of the employment relationship***.[119]

Invalidity of termination of the employment relationship is a relative invalidity, which can be claimed only by the party that is affected by the reason for invalidity. This constitutes an exception from the principle of absolute invalidity of legal acts set out in the Code of Labour.

The basic precondition for enforcing a claim arising from an invalid termination of employment by the employer is the notification whereby the employee notifies his employer that he insists on his continued employment. This applies analogically to the cases of invalid termination of employment at the initiative of the employee.

If, ***in case of an invalid notice given by the employer*** or in case of an invalid ter-

[119] Barancová, H.: Zákonník práce. Komentár. 2. vydanie. Praha. C.H.Beck 2010, p. 530 et seq.

mination of the employment relationship by the employer with immediate effect or during the probationary period, the employee notifies the employer that he is determined to continue being employed by him, his employment relationship continues and the employer is obliged to grant him a wage compensation if he does not assign work to the employee in accordance with his employment contract. ***He is entitled to such compensation in the amount of average earnings from the date on which he notified the employer that he is determined to continue being employed by him until the time when the employer enables him to continue performing his/her work*** or until the time when the court rules on the termination of employment pursuant to Section 79 of the Labour Code.

If the total time for which the employee should provide wage compensation exceeds 12 months, the court may, at the request of his employer to pay wages for time in excess of 12 months be reduced, possibly to be paid for time in excess of 12 months to deny the employee at all. Wage compensation can be awarded for a maximum time of 36 months.

If the employee gives an invalid notice of termination or unlawfully terminates his employment relationship either with immediate effect or during the probationary period, and the employer notified him that he insists on him to continue performing his work, his employment relationship continues. Should the employee fail to continue performing his work, ***the employer is entitled to ask him for the compensation of damage sustained as a result of his/her conduct.***

If it is proven that an employment relationship was terminated unlawfully, the court determines in its decision – judgment – that the termination of the employment relationship is invalid and that the employment relationship continues.

PROTECTION

In general, it can be said that the primary mechanisms for enforcement of employment laws comprise means of administrative enforcement and judicial enforcement.

Administrative enforcement

According to the Section 2 of the Act No. 125/2006 of Coll. on the Labour Inspection, the labour inspection is defined as:

a) a supervision of compliance

1. of the labour laws,

2. of laws and other regulations to ensure the safety and health safety at work

3. of laws governing the prohibition of illegal work and illegal employment,

4. of obligations arising from the collective agreements,

5. of the Act. 650/2004 Coll. on supplementary pension savings (in the area of the supplementary pension savings for certain categories of employees)

b) drawing the consequences for infringements referred to in point a) and a violation of the obligations arising from collective contracts,

c) provision of free consulting.

In the cases when the labour inspectorate according to an incentive (or during the control without any incentive) finds infringement by the employer, the labour inspector issues a protocol on the outcome of labour inspection, it obligates in it the employer to take measures to recompense the infringement. Labour Inspectorates can also impose a fine (up to EUR 100,000 or up to EUR 200,000 for serious breach) to the

employer if any infringement is found out.

Judicial enforcement

The employee has the right to enforcement of rights from employment relationship before an ordinary court.

Employees and employers who sustain damage due to breach of obligations arising from labour-law relations may claim their rights in court (Article 9 of Basic principle of the Labour Law).

Section 7(1) of the Code of Civil Procedure (Act No. 99/1963 Coll.) provides that the courts in civil proceedings hear and decide disputes and other legal matters arising from civil law, labour law and family law relations.

WORK (LABOUR) DISCIPLINE, COMPETITIVE CLAUSE

The term work discipline means in accordance with labour-law theory the regulations which contain rights and duties and also it is fulfilment of obligations.

Content of the work discipline is made of all the legal duties of the employee that arise for him/her from the contract of employment, collective agreement, working rules, generally binding legal regulations and other regulations he/she was made familiar with.[120]

The Labour Code regulates (Section 81) basic duties only; other duties are included in other acts, employment contract, and internal rules of the employers.

The basic duties of the employees are: to work responsibly and properly, and to follow the instructions of superiors; to be at the workplace at the beginning of working time, to utilise the working time for assigned work and to leave only after the termination of the working time; to properly manage the resources entrusted to him/her by the employer; to maintain confidentiality over matters that he/she became acquainted with in the course of employment, and which, in the interests of the employer may not be disclosed to other persons.

The Labour Code distinguishes between restrictions on competition during the employment and after its termination. Both kinds of restrictions must be agreed in writing.

In accordance with Section 83 of the Labour Code the employees can along with their career, performed in the employment relationship, carry out another gainful activity, which has competitive character to the object of employer´s business, only with a previous written consent of the employer.

The limitation related to performance of another gainful activity does not apply to performance of teaching, scientific, artistic, journalistic, lecturing and literary activities.

As regards non-competition obligations after termination of the employment (Section 83a of the Labour Code), employer and employee may agree in the employment contract that up to 1 year after employment termination the employee will not perform gainful activities which has competing character to the employer's scope of activity. Non-compete clause may be agreed only with the employee who during the employment acquires information and knowledge which is not commonly available and the usage of which could leave to a material harm to the employer. For each month of the employee's compliance with the non-competition covenant the employer is obliged

[120] Barancová, H. In: Barancová, H., Schronk, R.: Pracovné právo. Bratislava, Sprint 2 s.r.o. 2012, p. 351-386.

to pay to the employee compensation in the amount of at least 50% of the employee's average monthly earnings. If the employee breaches any of the restrictions, he/she is obliged to pay back to the employer financial compensation (penalty) amounting up to the total amount of the compensation agreed for observance of non-competition covenant. Such penalty is proportionally decreased if the employee complied with the restrictions at least for a part of the agreed restriction period. Upon the payment of the penalty, the employee's obligation to comply with the non-competition covenant ceases to exist, i.e. the employee is no longer obliged to comply with the non-competition covenant. The employer is entitled to withdraw in full or partially from the agreement on non-competition obligation only until the date of termination of the employment. The employee is entitled to withdraw from the agreement on non-competition obligation if the employer failed to pay the compensation within 15 days from the due date. Subject to invalidity the agreement on post-employment non-competition obligation must be a part of the employment contract. Accordingly, withdrawals must be made in writing.

THE LIABILITY

The Labour Code of the Slovak Republic divides ***the liability for damage according to the subjects into the liability of the employee and that of the employer*** (Sections 170-222 of the Labour Code).[121]

The establishment of the liability for damage in labour law requires the fulfilment of certain liability conditions which include:

a) an unlawful act;
b) the origin of damage;
c) a causal link between the unlawful act and the origin of damage;
d) the employee's culpability;
e) the existence of employment relationship;
f) that the damage must occur during the fulfilment of working tasks or in direct relation thereto as defined by the provisions of Sections 220 and 221 of the Labour Code.

Employee

The employee's liability for damage is a subjective liability. Therefore, if the employee suffers from a mental illness, he/she is liable for the damage caused by himself/herself only when he/she is capable of controlling his actions or assess their consequences.

The Labour Code construes the employee's liability for damage as a subjective liability with the presumption of guilt and a subjective liability with the presumption of innocence. The liability for the presumption of innocence is the employee's general liability in the case of which the employer must prove the employee's culpability. In case of liability with the presumption of guilt the employee must prove his own innocence (exculpation).

Under Section 179 of the Labour Code the employee is liable to the employer for damage caused by the culpable breach of his duties during the fulfilment of his/her

[121] Schronk, R. In: Barancová, H., Schronk, R.: Pracovné právo. Bratislava 2012, p. 515 et seq.

working tasks or in direct relation thereto.

Also the employee who has caused the damage by a wilful act contrary to the rules of fairness and civic coexistence is liable for the damage.

The employer is bound to prove not only the origin of damage and the unlawful action of the employee, but also his culpability and the causal link between the origin of the damage and the unlawful action of the employee.

The liability for the deficit of entrusted assets for which the employee is accountable is the employee's liability with the presumption of guilt (Section 182-184 of the Labour Code). An agreement on material liability is a condition of substantive law for the establishment of this type of liability. The deficit is the accounted difference between the actual state of entrusted assets for which the employee is accountable and the data of the accounts showing that the actual state is less than the recorded state. The fundamental legal characteristic of the deficit is the absence of the goods. If the goods are not missing, it is impossible to establish this type of liability.

The special type liability with the presumption of guilt is employee's accountability for loss of entrusted objects. The necessary prerequisite for the establishment of the employee's liability is (Section 185 of the Labour Code):

- damage in the form of the loss of entrusted object;
- written confirmation of the take-over of the object.

Employer

Under the provisions of Section 192 of the Labour Code the employer is liable for the damage caused to the employee by unlawful action. This is an objective liability which is applied when all required legal conditions for the establishment of the employer's special liability are not available.

An employer shall be accountable to an employee for damages caused due to violation of legal obligations or deliberate action against good morals to the employee in the performance of work tasks or in direct relation to it. An employer shall also be accountable to an employee for damages sustained to him/her due to violation of legal obligations within the performance of an employer´s tasks by employees acting in the name of the employer.

The social risk of an accident at work and an occupational disease is part of social insurance. The employer's liability for accidents at work and occupational diseases is construed in the Labour Code as a specific liability.

The employee who has suffered an accident at work or whose occupational disease has been ascertained must be paid by the employer within the scope of his liability for damage and compensation for the material loss.

Further compensation is provided under Act No. 461/2003 Coll. on Social Insurance as amended.

Questions

1. Pre-contractual relationship.
2. The types of the employment relationship.
3. The substantive conditions of the employment contract.
4. The probationary period.
5. The change of the employment relationship.

6. Employment termination – manners.
7. The notice and immediate termination of the employment (conditions).
8. The reasons of notice and immediate termination of employment.
9. Severance pay.
10. Invalid termination of the employment.

3. WORKING TIME, REMUNERATION, OBSTACLES TO WORK, SOCIAL POLICY

3.1 Working time and the rest

The ***working time*** is a certain period of time in the framework of which the employee is at the employer's disposal, performs work and fulfil obligations in accordance with employment contract. The time of rest is time which is not working time.

The maximum weekly working time is 40 hours a week. The maximum working time is 38 ¾ hours for two-shift operations, 37 ½ hours for three-shift or continuous operations (Section 85 of the Labour Code).

The working time of employees handling proven carcinogenic substances, engaged in working processes with a carcinogenic risk or performing activities leading to exposure to A category ionizing radiation in a controlled zone with sources of ionizing radiation, is a maximum of 33½ hours weekly.

Working time (Section 90 of the Labour Code): [122]

Established weekly working time is a working time determined by an employer for all of its employees or for the individual organizational divisions within the limits of the statutory weekly working time.

Determined weekly working time is a time which a particular employee is obliged to work in the respective week upon scheduling the established weekly working time.

The average weekly working time including overtime and cannot exceed 48 hours.

Over the period of 24 hours working time must not exceed 8 hours, unless otherwise specified in the Labour Code (for example unevenly scheduling working time).

A work shift is part of the stipulated weekly working time which, on the basis of a predetermined timetable of work shifts, an employee shall be obliged to work within 24consecutive hours and work break.

Shift work shall be a manner of organising working time in which employees alternate at the same workplace according to a certain schedule and, in the course of a certain period of days or weeks, work at differing times.

A morning shift is a work shift whose greater part falls within the time period between 06:00 hours and 14:00 hours. An afternoon shift is a work shift whose greater part falls within the time period between 14:00 hours and 22:00 hours. A night shift is a work shift whose greater part falls within the time period between 22:00 hours and

[122] Barancová, H.: Zákonník práce. Komentár. 2. vydanie. Praha, C.H. Beck 2010, p. 572 et seq.

06:00hours.

The arrangement of working time: one-shift, two work shifts, three shifts, this shall be a three-shift, or if the work is arranged consecutively through all days of a week it is continuous work mode.

The scheduling of working time (Section 86 – 88 of the Labour Code): [123]

- **evenly**: the extent of the working time in a single week is the same or differs maximum by 3 hours and the working time in the individual days does not exceed 9 hours. (average 4 weeks),
- **unevenly**: if character of the work or conditions does not allow an even scheduling of the working time evenly, i tis possible to schedule the working time also unevenly into the individual weeks (the scheduling term is of maximum 4 months, in exceptional cases of 12 months. The working time cannot exceed 12 hours during period 24 hours,
- **flexible working time**: the flexible working time is a method for the even or uneven distribution of working time that an employer may introduce only after agreement with employee representatives. Basic working time is a time segment in which the employee is obliged to be in the workplace. Optional working time is a time segment during which the employee is obliged to be present in the workplace in order to complete operational time. Operational time is the overall working time that an employee is obliged to work in a flexible working period determined by his/her employer. A flexible working period may implemented as a working day, working week, four week working period or another working period. The length of a work shift where flexible working time is implemented may not be more than 12 hours.

THE REST[124]

The employer is obliged to provide to the employee **breaks** during the work (Section 91 of the Labour Code). The Labour Code provides for a break time of 30 minutes, which must be granted if the employee's working shift is longer than 6 hours or 4 ½ hours in the case of young employees. During the work which cannot be interrupted, the employee is entitled to adequate time for rest and eating, without discontinuing operation or work.

The uninterrupted daily rest – the employer is obliged to provide the daily rest after work in the amount of 12 consecutive hours within the period of 24 hours. In specifically defined cases, the Labour Code allows for the shortening of this daily rest to 8 hours for employees older than 18 (Section 92 of the Labour Code) in continuous operations and rotational shift work and urgent repair work, if this is to avert a danger posing a risk to life and health of employees, or an extra-ordinary event.

The uninterrupted weekly rest - the employer is also obliged to distribute working time in such a way that the employee has two consecutive rest days once a week – Saturday and Sunday, or Sunday and Monday. If the nature of work and operational conditions do not allow for this, employees older than 18 are provided two consecutive rest days on other days of the week.

---

[123] Barancová, H.: Zákonník práce. Komentár. 2. vydanie. Praha, C.H. Beck 2010, p. 584 et seq.

[124] Schronk, R. In: Barancová, H., Schronk, R.: Pracovné právo. Bratislava, Sprint 2 s.r.o. 2012, p. 381 et seq.

If it is not possible to provide consecutive rest days in a week (in accordance with Section 93 of the Labour Code), then for employees older than 18, following agreement with employee representatives or employees (if they are not represented), a weekly period of continuous rest can be provided once a week (or two weeks) for no less than 24 hours, with additional substitute rest period, or rest can be provided once a week for no less than 35 hours.

The rest day – days of the uninterrupted weekly rest and bank holiday. The employer can order work during the rest days exceptionally.

STAND BY DUTY (ON CALL DUTY)

If, in justified cases and in order to ensure the performance of essential tasks, an employer orders an employee or the employee agrees to remain in a place determined in advance for a period of time determined in advance outside the schedule of working shifts and beyond the set weekly working time and to be prepared to perform work in accordance with the employment contract, the employee is deemed as stand by duty.

Stand by duty should be at workplace or at another agreed place outside the workplace (Section 96 of the Labour Code).

It is necessary to distinguish an active and inactive part of stand by duty at the workplace. Time when the employee is at the workplace and is prepared for work performance, but the employee does not perform the work, this part is an inactive part of the stand by duty and it is considered as the working time. The active part of standby duty is the part of the stand by duty during which the employee performs work and this time is considered as overtime work.

The employer can order the on-call duty maximum 8 hours in a week, with the maximum extent 100 hours in a calendar year. Above this extent, the on-call duty is allowed only after agreement with an employee.

OVERTIME WORK

Overtime is work performed by an employee following the employer's orders or with the employer's consent above the determined weekly working time resulting from the previously agreed determined scheduling of the working time, and performed out of the scheduled working shifts (Section 97 of the Labour Code).

The employer can order the overtime only in cases of temporary or urgent increased need for work, if it is a public interest, even for the time of the continuous rest between two shifts. However, the continuous rest between two shifts cannot be shorter than eight hours.

On average, the overtime cannot exceed eight hours in a week in a period of the maximum of four consecutive months, however, the maximum of 12 consecutive months. In a calendar year, the employee can be ordered to work overtime in the maximum of 150 hours. The employer can agree with the employee overtime work in additional extent 250 hours in calendar year (together 400 hours overtime hours).

NIGHT WORK

The night work shall be work performed within the time period between 22:00 and 06:00 hours (Section 98 of the Labour Code).

The employee working at night shall be an employee:

a) who performs work requiring regular performance at night, to the extent of at least three

consecutive hours or,

b) who presumably works at night, for a minimum of 500 hours per year.

The employer is obliged to secure that employee working at night undergoes examination of his/her capacity of health for night work.

VACATION

The employee is entitled to the vacation in accordance with conditions regulated by Sections 100-117 of the Labour Code. [125] The employee is entitled:

a) the annual vacation and aliquot part of the annual vacation,
b) the vacation for effective days,
c) the additional vacation.

The annual vacation

The annual vacation belongs to an employee who works at least 60 days in a calendar year, provided the employment at the same employer has lasted continuously for the entire calendar year. A claim to an aliquot part of the annual vacation belongs to the employees in case the employee has worked at the employer for 60 days in the respective calendar year but his/her employment relationship has not been continuous during the entire calendar year. The aliquot part of the annual vacation is a one twelfth of the annual holiday for each calendar month of the continuous duration of the same employment relationship.

The basic vacation length is at least 4 weeks. The employees who have reached at least 33 years in calendar year, they are entitled to at least five weeks of vacation. The week of vacation is seven continuously days.

The period for taking vacation determined by the employer according to a vacation plan established with the previous consent of the employees' representatives. When determining the commencement of vacation, the employer should take into account the justifiable interests of the employees.

The employee is entitled to wage compensation in the amount of his/ her average wage during vacation.

A claim to an aliquot part of the annual vacation belongs to the employee who has worked at the employer for 60 days in the respective calendar year but his/her employment relationship has not been continuous during the entire calendar year (Section 102 of the Labour Code). The aliquot part of the annual vacation is one twelfth of the annual holiday for each calendar month of the continuous duration of the same employment relationship.

The vacation for effective days

If the employee has not worked at least 60 days in the respective calendar year for the same employer, he/she is not entitled to annual vacation. However, he/she is entitled to the vacation for the effective days of work amounting to 1/12 of due annual vacation for every 21 effective days of work in the respective calendar year (Section 105 of the Labour Code).

[125] Barancová, H.: Zákonník práce. Komentár. 2. vydanie. Praha, C.H. Beck 2010, p. 630 et seq.

The additional vacation

Additional vacation of one week is provided to employees who working the entire calendar year under the ground, in mineral extraction or tunnelling, and employees working in unfavourable and hazardous conditions or performing exceptionally difficult or harmful works (Section 106 of the Labour Code).

3.2 Wage[126]

The employer shall be obliged to provide an employee with a wage for work performed. The right to remuneration is employee's basic right (Article 3 of Basic Principle of the Labour Code).

A wage shall be financial settlement or settlement of a financial value (wages in kind), provided by an employer to an employee for work. The following items shall not be deemed to be wages in particularly: wage compensation, severance allowances, discharge benefit, travel reimbursement including non-mandatory travel reimbursement, contributions from a social fund, contributions to supplementary pension saving funds, contributions to an employee´s life insurance, revenues from capital holdings (shares) or bonds, a tax bonus, income compensation for an employee´s temporary incapacity for work, supplementary sickness insurance, compensation for work standby, monetary compensation under § 83a(4) and other payments provided to an employee in relation to employment pursuant to this act, other relevant regulations, a collective agreement or an employment contract which do not have the characteristics of wages (Section 118 of the Labour Code).

Also considered as wage shall be settlement provided by an employer to an employee for work upon the occasion of his/her work anniversary or personal anniversary, if such is not provided from net profit or from the social fund.

The Labour Code stipulates a positive order of equal treatment of men and women when providing a salary. The principle of equal treatment to remuneration applies provided that the work has same composition, reliability and intensity, performed under the same work conditions and achieving the same work output and results (Section 119a of the Labour Code).

The wage shall be due in arrears for a monthly period, this by the end of the consequent calendar month at the latest, unless agreed otherwise in the collective agreement or in the employment contract (Section 129 of the Labour Code). The wage is paid during the working time and at the workplace, unless agreed otherwise in the contract of agreement. The employer is obliged to send the salary or a part thereof, as determined by the employee, to the determined bank account or in a branch of foreign bank in the Slovak Republic, if the employee requests so in writing or if the employer and employee agree on such a procedure (Section 130 of the Labour Code).

In accordance with Section 119 (1) of the Labour Code the ***wage must not be low-***

[126] Barancová, H. In: Barancová, H., Schronk, R.: Pracovné právo. Bratislava, Sprint 2 s.r.o. 2012, p. 401 et seq.

er than the minimum wage regulated by special law. Minimum wage is the lowest permissible remuneration. The amount of statutory minimum wage is adjusted every calendar year, always effective from 1 January, according to Ordinance of the Government of the Slovak Republic.

If the remuneration of employees has not been agreed in the collective agreement, the employer is obliged to provide the employee with wages amounting to at least his/her minimum wage entitlement specified for the degree of difficulty of work in the relevant position (Section 120 of the Labour Code). The employer is obliged to assign a degree of difficulty of work to each job position. The rate of minimum wage entitlement for each degree of difficulty of work is a multiple of the minimum hourly wage and the minimum wage coefficient.

Overtime Wage

- for the overtime, the employee is entitled to the achieved wage and a wage compensation at least 25% of his/her average earnings. For the overtime, the employee performing hazardous work is entitled to the achieved wage and wage compensation at least 35% of his/her average wage;
- an employer may agree with an employee that the employee may take a time off for overtime work in the extent in which the overtime work was performed.

Wage and compensation for a Holiday

- the employee who works on a holiday an employee is entitled not only his/her wage for each worked hour, but also a wage compensation of at least 50% of his/her average earnings;
- an employer may agree with employee that for holiday work the employee will take time off, the employee is entitled to salary compensation amounting to his average wage during the time off.

Wage compensation for night work

- the employee is entitled for each hour of the night work a wage compensation at least 20% of the statutory minimum wage.

Wage compensation for onerous work performance

- the employer is obliged to provide a compensation for work in an onerous and deleterious work environment: with hazardous chemical, carcinogenic and mutagenic, biological, dust and physical factors (e.g. noise, vibration, ionizing radiation).

Compensation of the stand by duty

The Labour Code (Section 96) distinguishes the stand by duty on the workplace and out of the workplace, so the remuneration is different:

- ***stand by duty on the workplace:***
- *active part*, the time when an employee on standby performs work is considered as overtime and the employee is entitled to compensation for the overtime work;
- *inactive part,* the time during which the employee remains in the workplace

and is prepared to perform work but does not perform work, this part is considering as working time and the employee is entitled to pay amounting to a proportionate part of their basic pay, which shall not be less than statutory minimum wage. The employer can agree with the employee on the provision of alternative free time in compensation for the inactive part;

- ***stand by duty in agreed location outside of the workplace***–it is time considered as working time and the outside the workplace, employees are entitled to pay amounting to at least 20% of the statutory minimum wage. The time when an employee on standby performs work is treated as overtime work.

THE AVERAGE EARNINGS

Generally, the average earnings are determined for calculating payments arise from employment relationship. The average earnings are determined not only for the purposes of severance pay, but also for calculating salary compensation during an employee's sick leave or holiday, etc.

The method for calculation of the average monthly earnings is set out by the Slovak Labour Code. It is calculated from the "gross salary" paid out to the employee during the "relevant period".

The **relevant period** is the calendar quarter preceding the calendar quarter in which the average monthly earnings is determined and for which the average monthly earnings is valid. The average monthly earnings may be calculated always as of 1 January (taking into account gross salary paid for the fourth quarter of the previous year), 1 April (taking into account gross salary paid for the first quarter of the respective calendar year), 1 July (taking into account gross salary paid for the second quarter of the respective calendar year) and as of 1 October (taking into account gross salary paid for the third quarter of the respective calendar year). The average earnings are valid for the whole calendar quarter in which it is determined.

Example: If employment terminates as of 31 August 2012, the average monthly earnings determined as of 1 July 2012 and calculated on the basis of the gross salary paid to the employee during April – June 2012 will be used for the purposes of severance pay calculation.

The **gross salary** includes basic monthly salary agreed in the employment contract and also any other salary payments including bonuses or other extraordinary payments accounted to be paid to the employee. However, if the employee received during the relevant period the salary payment which corresponds to a longer period than the relevant period (e.g. yearly performance bonus), its proportional rate corresponding to the calendar quarter must be determined for the purposes of average monthly earnings calculation.

3.3 The obstacles to work

It can happen that an employee is not table to perform the agreed type of work in the determined working time and the employer is not able to assign the work to an employee.

The obstacle to work is occurred and the employer justifies the absence of work of

the employee. The obstacles to work are regulated by Labour Code (Sections 136-145) and for purpose of this text some obstacles to work will be analysed.

I. The employee's obstacles to work[127]

Obstacles due to general interest

The employer is obliged to provide the employee a time off for inevitably necessary time to perform public functions, civil duties and other actions in general interest, if such an activity cannot be performed out of the working time

The employer provides the employee with a time off without the salary compensation, unless the Labour Code, special regulation or collective agreement stipulates otherwise or if the employee agreed with the employer otherwise.

The employer releases the employee for a long term to perform his/her public functions and to perform his/her trade union function. He/she is not entitled to wage compensation from the employer.

The civil duty (Section 137 (4) of the Labour Code) is, for example, the appearance as witness, interpreter, expert witness, the provision of first aid and other.

The another action in the general interest (Section 137 (5) of the Labour Code) is, for example, donation of blood, aphaeresis or donation of other biological materials, performance of a function on a trade union body, activities of a member of a works council and works trustee, activities of a member of an advisory body to the Government.

The increasing of the qualification

Slovak Labour Code provides regulation of the education of employees. [128]

Extending (deepening) of qualification might be characterised as qualitative change of the employee's qualification on the same horizontal level, without any change of the qualification degree (that is considered to be as vertical level). Extension is therefore characterised as permanent innovation of employee's professional knowledge necessary for performing of the agreed work. Participation in education shall be the performance of work, for which an employee shall be entitled to wage compensation. In such a case the employee is obliged to participate in such ordered educational training.

Increasing (improvement) of qualification might be characterised as acquiring of higher degree of qualification. It includes also cases of acquiring prerequisites set by a legal act or by employment contract. Increasing of qualification is a qualitative change on a vertical level. Increasing of the qualification is an obstacle of the work and the employee is entitled to the time off and wage compensation if the employee and the employee have agreed on increasing of the qualification. The employer usually agrees with increasing of the qualification if it is necessary for the employer. Extent of leave is governed by Section 140 (3) of the Labour Code.

The important personal obstacles of work

The important personal obstacles of work are regulated in the Section 141 of the

[127] Barancová, H.: Zákonník práce. Komentár. 2. vydanie. Praha, C.H. Beck 2010, p. 729 et seq.

[128] Barancová, H. In: Barancová, H., Schronk, R.: Pracovné právo. Bratislava, Sprint 2 s.r.o. 2012, p. 493-497.

Labour Code (we will deal only with certain obstacles).

The employer justifies the absence of an employee working at the time of his/her incapacity due to illness or injury, maternity leave and parental leave, quarantine, nursing a sick family member. During this time, the employee is not entitled to wage compensation.

The employer shall provide the employee time off with wage compensation or without compensation for the following reasons:

- *examination or treatment of an employee in a healthcare establishment* (a paid leave of absence is provided for the necessary period of time, but no more than seven days in a calendar year; further leave of absence is provided for the necessary period of time without wage compensation);
- *accompaniment a family member to medical examination or treatment* (a paid leave of absence is provided for the necessary period of time, but no more than seven days in a calendar year);
- *the death of a family member;*[129]
- *the wedding*.

The employer may provide the employee with the above additional time off without pay, or may be granted leave without pay for other reasons.

II. The obstacles of work of the employer

The obstacles of work of the employer are regulated by Section 142 of the Labour Code:

- waiting time – can be characterized as a situation when the employee cannot perform work because, on the employer's part, an obstacle occurred that is of a temporary character (e.g. machinery equipment error, lack of raw material or fuel supply) and that makes it impossible for the employee to perform the agreed type of work, the employee is entitled to a time off with salary compensation amounting to his/her average earnings;
- if an employee performs a weather-dependant activity and he/she cannot perform the work due to unfavourable weather conditions (e.g. high temperature season in civil construction industry, etc.), he/she is entitled to a time off with salary compensation amounting to at least 50% of his/her average earnings;
- If an employee cannot perform work due to such obstacles on the employer's part, the employee is entitled to a time off with salary compensation amounting to his/her average salary (if there is an agreement with the employees' representatives, the compensation should be at least of 60% of employee's average earnings).

[129] A family member is a spouse, a natural child, a child entrusted to an employee for alternative care based on a court ruling or a child entrusted to the care of an employee in advance of a court ruling on adoption, an employee´s parent, employee´s sibling, spouse of an employee´s sibling, parent-in-law, spouse´s sibling, employee´s grandparent, spouse´s grandparent, employee´s grandchild and other persons residing in a common household with the employee.

3.4 Social policy of the employer

The employer's care of the employees can be seen in the field of social policy, especially by providing the voluntary financial or non-financial benefits. The Labour Code regulates such areas:

The working and live conditions of the employees

For improvement in the culture of work and working environments, employer shall create adequate working conditions and shall attend to the appearance and arrangement of workplaces, social facilities and personal sanitation amenities.

An employer shall establish, maintain and improve the level of social facilities, sanitation amenities, and pursuant to special regulations also medical facilities for employees.

An employer shall be obliged to ensure safe custody, of particularly personal effects and personal items usually brought to the workplace by employees, as well as usual transportation devices, if employees use them on the road to work and back, with the exception of motor vehicles. The employer may, after agreement with representatives of employees, determine conditions under which the employer will be also liable for motor vehicles parked on the premises. Such obligation of the employer shall also apply to every other person acting for him at his workplace.

The catering of the employees

Under the Section 152 of the Labour Code the employer is obliged to ensure catering for employees, if an employee works for more than 4 hours (if the employee works more than 11 hours the employer is not obliged, but he can provide catering).

Catering must be provided:

- directly at the employer's premises or in their neighbourhood (in the employer's own catering establishment, or in the catering establishment of other company),
- if provision of meals directly in the employer's premises is not possible, the catering may be ensured in alternative manner (e.g. by providing meal vouchers),
- or by financial contribution.

If the employer provides catering directly, its contribution has to amount to at least 55% of the price for the meal, however it should not exceed 55% of the catering contribution provided for 5 to 12-hour business trip in accordance with a specific regulation (namely Act No. 283/2002 Coll. on Travel Expenses and relevant Order of the Ministry of Labour, Social Affairs and Family on the amounts of catering contributions in respect to domestic business trips).

If the employer provides catering in alternative manner - through a person authorized to provide catering services, the price of food means the value of meal vouchers. The value of a meal voucher must be at least 75% of the catering contribution provided for 5 to 12-hour business trip in accordance with a specific regulation.

The education of the employees

The employer is obliged to take care of education of the employees, deepening and improvement of their qualification.

The Section 155 of the Labour Code enables the employer and employee to con-

clude an agreement, where the employer undertakes to provide the employee improving (increasing) of qualification by granting him/her time off, wage compensation and reimbursement of other costs pursuant to study and the employee commits himself/herself to remaining in an employment relationship with the employer for a determinate period upon completion of study, or to repay costs associated with the course of study, even when the employee terminates the employment relationship prior to the completion of study. Such an agreement must be in writing, otherwise is invalid.

Such an agreement must contain following provisions:

- the type of qualification and way of its increase,
- the period for which the employee commits himself/herself to remaining in the employment relationship with the employer,
- the type of costs and their total sum which the employee shall be obliged to repay to the employer if he/she do not fulfil his/her commitment to remain in the employment relationship with the employer for the duration of the agreed period

The total agreed period for remaining in an employment relationship must not exceed five years. If an employee fulfils his/her commitment in part, the obligation to repay costs shall be reduced proportionately.

The employer may conclude an agreement with an employee also in the case of deepening (extending) of qualification, if anticipated costs amount to at least 1.700 euros.

Working conditions of men and women taking care of the children

The working conditions of parents taking care of the children (or adoptive children) have some specifics and they are regulated mainly in the Sections 160 - 170 of the Labour Code.

The duration of ***maternity leave*** for a female employee is 34 weeks (or 37 weeks for lone[130] woman or 43 weeks if a woman gave birth to two or more children concurrently). A female employee may start her maternity leave at the beginning of the sixth week before the expected childbirth, but no earlier than the beginning of the eighth week before the expected due date. Maternity leave may never be shorter than 14 weeks and cannot terminate or be suspended before six weeks after the date of childbirth. The father of a child is entitled to parental leave for the same duration from the day the child is born in order to care for the new-born.

A female or male employee is entitled to ***parental leave***, to increase the care for the child**,** if so requested. Parental leave is granted to an employee with a child upon termination of a female employee's maternity leave or male employee's parental leave (34, 37 or 43 weeks) and is granted as requested (*i.e.* as applied for), but for a period no longer than until the child reaches three years of age (or six years of age for a seriously disabled child).

Questions

1. Please, describe term „working time".

[130] A 'lone' employee is an employee who lives alone and is single, widowed or divorced. A 'lone' employee is also employee who is lone for other serious reasons.

2. Please, describe terms „maximum working time".
3. What are the possibilities of scheduling of working time?
4. Which types of rests are regulated by Labour Code?
5. What is overtime work and stand by duty?
6. The vacancies in the Labour Code.
7. Please, describe the term „wage"?
8. Please, describe term „minimum wage claims".
9. The obstacles of work of the employee.
10. The obstacles of work of the employer.
11. The obligation of the employer to provide catering.
12. Please, describe term increasing/improving and deepening/extending of the qualification.
13. Maternity and parental leave.

4. THE COLLECTIVE LABOUR LAW

The participants of collective employment relationships are employees' representatives, employers and representatives of the employers.

The employees' representatives are trade union, work council, or work trustee, and representatives in the area of health and safety at work (Act No. 124/2006 Coll.).

With the view of securing just and satisfactory working conditions, employees shall participate in decision-making of the employer concerning their economic and social interests, either directly or by means of competent trade union body, of the works council or the works trustee; employees„ representatives shall mutually cooperate closely.

Employees shall have the right to the provision of information on the economic and financial situation of the employer and on the presumed development of its activities, and this in an understandable manner and in a suitable time. Employees shall have the right to voice their comments on such information and to projected decisions, to which they may submit their suggestions.

The employer according to their operational capabilities provides to the employees representatives necessary means for their activities – the place with the necessary equipment and pays for the appropriate costs.

The employee representatives participate in the creation of working conditions through co-decision making with the employer, negotiation and consensus with the employer, the right to certain information and to monitor activities.

The right to collective bargaining belongs to trade union only.

Trade unions are civic associations (legal entities) regulated by special law (Act No. 83/1990 Coll. on association of citizens) and they are established by registering with the Ministry of the Interior of the Slovak Republic. The Labour Code stipulates that the trade union organization is obliged to inform the employer in writing about its functioning within the employer and to provide the employer with a list of its board members (Section 230).

A ***works council*** is not a legal entity, and its status is governed by the Labour Code. The works council is elected by the employees directly and can be set up in companies with at least 50 employees. For companies with less than 50, but no less than three employees, a *works trustee* can be nominated by employees.

If a trade union organization and works council function alongside each other in an employer´s workplace, the trade union organization shall be entitled to collective bargaining, , to participate in decision-making, to control and to information, and the

works council shall be entitled to negotiation, to information and to perform control activity..

Collective bargaining and Collective agreement

The Act on Collective Bargaining defines *collective bargaining* narrowly as a process aimed at concluding a collective agreement. However, the concept of the right to collective bargaining is much wider.

Collective agreement[131]

- Regulates individual and collective relationship between employer and the employer, and rights and duties of the contractual parties,
- It is bilateral legal act – agreement between trade union and the employer,
- It is concluded for agreed period, if the period is not agreed, the collective agreement is concluded for 1 year,
- regarding the substantial merit, a collective agreement consists of two parts: the normative one and the contractual one**:**
    1. **normative –** this part is a source of law, the employee can claims own rights at court, and
    2. **contractual –** this part regulate commitment of employees representatives and employer (the parties may claim commitment not at court, but before negotiator and arbitrator).

According to Section 231 of the Labour Code the normative part regulates those employees' rights and working conditions which are more favourable than the standard set up by the Labour Code or other labour regulations. This is permitted only under condition that a certain content of collective agreement is not contrary to any explicit provision of the Slovak law or when it does not flow from the law that parties may not divert from its provisions. The contractual part of a collective agreement regulates mutual rights and duties of the employer and respective union organisation. Only the normative part of a collective agreement is a source of law in Slovakia.

The Slovak law (Act No. 2/1991 Coll.) distinguishes:

- Collective agreements concluded between employer and respective union body at the company level;
- Collective agreements of higher grade concluded between respective higher union body (which concludes collective agreements in the name of association of union organisations in a certain economic sector) and organisations of employers (employers usually associate themselves on the basis of economic-sector principles);
- Collective agreements of higher grade concluded between respective higher union body and the state in the position of employer (these apply to employees in the field of state services);
- Collective agreements of higher grade concluded between respective higher union body, representatives of the Slovak Government and representative delegates of employers (these apply to employees in the field of public services,

[131] Barancová, H. In: Barancová, H., Schronk, R.: Pracovné právo. Bratislava, Sprint 2 s.r.o. 2012, p. 605 et seq.

i.e. employees who occupy public utility jobs).

The *contracting parties* include the employer and trade union organization only — no other employee representatives are involved. The two parties are obliged to: start collective bargaining concerning the conclusion of a new collective agreement not later than 60 days prior to the termination of the existing collective agreement; hold negotiations; and provide cooperation to one another.

The Act on Collective Bargaining governs three types of collective disputes:

1. dispute over the conclusion of a collective agreement;
2. dispute over the enforcement of the fulfilment of the collective agreement; and

The only type of strike to be regulated in more detail is a strike in connection with collective disputes (disputes between the employer and the trade union organization for the conclusion of a collective agreement). [132]

In the case of the disputes between the employer and the trade union organization for the conclusion of a collective agreement, after the mediation proceedings, may declare a strike. Strike at the company is initiated by trade union body, if the strike is approved by the majority of the employees of an employer participating in the vote, provided that the vote will be attended at least a majority of employees counted from all employees. The employer may apply lockout. Lockout means partial or complete cessation of work by the employer. If the employee is unable to perform the job because it was applied to the lockout, it is an obstacle to work, employees are entitled to wage compensation only half of average earnings.

Questions

1. Please, describe the role of the employees' representatives.
2. Please, describe the collective agreement.
3. Which law regulates collective bargaining?

[132] Barancová, H. In: Barancová, H., Schronk, R.: Pracovné právo. Bratislava, Sprint 2 s.r.o. 2012, p. 623 et seq.