Labour Law of the European Communities in the Czech Labour law after Recodification of the Labour Code

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The labour law of the European Community was reflected in the Czech labour law at the time when the Czech Republic was preparing for its accession to the European Community by means of fundamental and extensive amendments of the then Labour Code, i.e. Act No. 155/2000 Coll. and certain other legal acts.[1] In the following paper, we shall pay attention to the reflection of the EC labour law into the new Labour Code, i.e. Act No. 262/2006 Coll., the Labour Code, as amended (hereinafter referred to as the "Labour Code").

General Issues

The basic starting point for examination of the reflection of EC labour law into the Labour Code is the

definition of subject-matter applicability of this legal regulation. In its provision of Section 1 subsection c), the Labour Code itself determines that it processes relevant regulations of the European Community. The comment to the said provision provides a summary of Directives processed in the Labour Code.[2]

Another starting point is the question how the new Labour Code ensures that the parties of employment relationships do not depart from the provisions which reflect the regulation of the Community labour law, by means of a contract.

According to Section 2 paragraph 1, the Labour Code rests on the principles that "everyone may do anything which is not forbidden by law". In this way, the labour law addressed, after a long period of time, the constitutional principles embodied in Article 2 paragraph 4 of the Constitution of the Czech Republic and in Article 2 paragraph 3 of the Charter of Fundamental Rights and Freedoms. The said principle is expressed in such way that rights and obligations in labour relations may depart from the Labour Code provided that such derogation is not expressly prohibited by the Code or provided that the nature of the Code's provisions does not imply impermissibility to depart therefrom. The express and absolute prohibition of contractual derogation from the provisions of the Labour Code is specified in the provision of Section 363 paragraph 2 of the Labour Code as it includes an exhaustive list of provisions, from which the parties of labour relations may not depart. To me, however, the regulation included in the annex to the sentence one in the provision of Section 2 paragraph 1 – it is possible to depart "provided that the nature of this Code's provisions does not imply impermissibility to depart therefrom" - seems rather problematic. It is clear from this provision that there are also other legal rules included in the Labour Code, which are of mandatory nature but their identification is a matter of the user's discretion (and in the end a matter of a judicial decision). Let me remind you at this point, the same way as my colleagues Bělina a Pichrt[3] did when they were considering only the draft Labour Code, the thought of Viktor Knapp about the mandatory and directory law: "The easiest way of distinguishing between ius cogens and ius dispositivum is when it is clearly said in the act as in Section 263 paragraph 2 of the Commercial Code. In other cases, in particular in Civil and Labour law, it is more difficult."[4] In consideration of the fact that the new Labour Code should contribute to liberalization of labour relationships and application of the liberty of contract in much greater extent, it will be in my opinion difficult for users (employers and employees), who were used to the current method of legal regulation (mandatory provisions and injunctive rules), to consider when they may depart from the legal regulation because the nature of the provision allows this. In its judgment of 12 March 2008 concerning the motion to cancel certain provisions of Act No. 262/2006 Coll., the Labour Code (hereinafter referred to as the "judgment of the Constitutional Court"), even the Constitutional Court admitted that "interpretation of such relatively inexplicit concept may out of doubt raise problems in the area of labour relations; it will not be often possible to solve these problems in a manner other but by an amendment of the concerned provisions of the Labour Code."[5] On the other hand, however, it did not find the given provision unconstitutional and it states that this provision could be classified as a relatively inexplicit legal rules that are common even in other areas of law and do not cause any significant interpretation problems there.[6]

Another prohibition is formulated only relatively as according to the provision of Section 2 paragraph 1 sentence two of the Labour Code – "It shall not be possible to depart from the provisions of Section 363 paragraph 1, which transpose the relevant EC regulations; however, this shall not be applicable where such derogation is in favour of an employee." The provision of Section 363 paragraph 1 of the Labour Code is a very detailed enumeration of individual provisions of this Act, which reflect EC regulations[7]. Nevertheless, it does not follow from the provision itself that it is a provision of mandatory nature, not allowing any derogation. In our opinion, the prohibition of derogation from the provision of Section 363 paragraph 1 of the Labour Code may not be derived even by application of the general prohibition of Section 2 paragraph 1 sentence one because it does not follow even from the nature of the examined provision that one may not depart from it. Therefore the regulation included in the provision of Section 2 paragraph 1 sentence two of the Labour Code is necessary, which subordinates the provision of Section 363 Clause 1 to the relative prohibition of derogation. This prohibition allows the contracting parties to agree on regulation different from the one included in the provisions specified in Section 363 paragraph 1, nevertheless with the restriction that the agreed other (meaning different) regulation has to be in favour of the employee. We leave aside the fact that the possibility of derogation defined in this was will probably represent a certain problem for the practice and in the end, it may result in the increasing number of labour disputes and on the other hand we emphasize that retaining of the option of a different regulation is compatible with EC legal regulations, which in most cases leave the states with an option of more favourable regulation. The conclusion of unconstitutionality of the examined provision was not reached by the Constitutional Court either as it dismissed the motion to cancel this provision.[8]

In conclusion of this general part, we may summarize that the reflection of the Community labour law is ensured on the Labour Code in such manner that the reflection itself forms a part of the subject-matter applicability of the Labour Code and further by the fact that

it is impossible to depart from specific provisions of the Labour Code, in which the EC regulations are processed, except for cases when a different regulation would be in favour of the employee.

In the next part of this paper, we shall address certain specific issues of the reflection of the Community law in the Czech labour law and we will follow the defined range of issues in the previous work, which addressed the original Labour Code.[9]

Equal Treatment

Directives regulating equal treatment[10] are reflected in particular in the provision of Section 16 of the Labour Code; the same follows also from the provision of Section 363 paragraph 1 of the Labour Code while from the whole provision of Section 16 (3 paragraphs), only paragraphs 2 and 3 are considered provisions processing EC regulations, not paragraph 1.

In the provision of Section 16 paragraph 1, the principle of equal treatment is expressed as an employer's obligation to safeguard equal treatment for all employees as regards their working conditions, remuneration for work and other emoluments in cash and in kind of monetary value, vocational training and opportunities for career advancement.

The provision of Section 16 paragraph 2 expresses a prohibition of any form of discrimination. Nevertheless as concerns definition of the terms such a direct and indirect discrimination, harassment and sexual harassment, instruction to discriminate and incitement to discrimination including specification of instances when different treatment is permissible, it refers to the Antidiscrimination Act. The Labour Code itself only specifies that discrimination shall not mean a different treatment owing to the nature of occupational activities, which are to be carries out. Such differentiation naturally has to be necessary for the work performance and "the objective followed under this exception must be legitimate and the requirement must be adequate" (Section 16 paragraph 3 sentence one of the Labour Code). Discrimination shall further not be deemed to occur in case of taking measures aimed at levelling out disadvantages following from the fact that a natural person belongs to a groups defined by any of the reasons specified in the Antidiscrimination Act (Section 16 paragraph 3 sentence two of the Labour Code). Alike the Labour Code itself does not (unlike the original one) regulate the means of protection against discrimination in labour relations and it also refers to the Antidiscrimination Act.

We might consider the said regulation sufficient and corresponding to the relevant Directives but there is "one little mistake" - there is no Antidiscrimination Act.[11]

Despite the missing legal regulation that would in general include EC regulations, there are certain partial provisions in the Labour Code, which reflect the principle of equal treatment, however, in all instances only in relation to a specific concept – this is for example the provision of Section 110 par. 1, which lays down the principle of equal treatment in relation to remuneration, namely as follows: "All employees employed by one employer are entitled to receive equal wage, salary or remuneration according to an agreement for the same work or work of same value". Similarly, we may find an application of the equal treatment principle in relation to the working conditions (maternity and parental leave, adjustment of working hours and others).

The Community regulation is partially reflected in the area of equal treatment and prohibited discrimination in the provision of Section 14 par. 2 of the Labour Code which expresses the ban on the employer to discriminate an employee in any way or put his at some disadvantage only because the employee claimed protection of his rights ensuing from the labour relations.

Hence a considerably complex and more accurate reflection of the Community regulation of equal treatment and prohibited discrimination is still only the provision of Section 4 of Act No. 435/2004 Coll., on Employment, as amended (hereinafter referred to as the Employment Act"). Nevertheless, according to Section 4 par. 1 of the quoted Act, the said regulation applies only to equal treatment to employment, not to working conditions, remuneration and vocational and career promotion.

The solution of the said situation is difficult. In the pending period, it possible is in our opinion to start from the provisions of the Employment Act and to apply the said provision (Section 4) *per analogiam iuris* also to a more detailed definition of terms forming the content of the prohibited discrimination also in the labour relations regulated by the Labour Code. An argument in favour of the similar procedure might be in particular the specification of the subject-matter of the labour law, which regulates both the relations concerning realization of the right for employment and the relations, in which the employment is realized – labour relations. We may deduce from this that if the definition of terms forming the content of the prohibited discrimination applies to legal relations concerning the approach to employment, these terms within the same definition might be applied also in legal relations, in which the right for employment is realized and the principle of equal treatment and prohibited discrimination applies too.

Nevertheless, we cannot do with making use of the provisions of the Employment Act applied *per analogiam iuris* over and over again. The legal regulation has to reflect the provisions of the Community law in their full extent, i.e. in relation to the principle of equal

treatment and prohibited discrimination as well as working conditions, remuneration and vocational and career promotion. It is naturally possible to wait for another draft of the Antidiscrimination Act, however, in consideration of the fact that this draft has been twice unsuccessful in passing through the legislative process, a speedy solution cannot be expected. In our opinion, a solution applied directly in the Labour Code would be more efficient as the provisions of Sections 16 and 17 would be supplemented with a subject-matter definition of terms from the area of prohibited discrimination as well as with direct regulation of legal means, which the employees might apply to protect themselves against discrimination.[12] One may consider also an amendment of the Employment Act that would extent the application of Section 4 not only on the approach to employment but also to other areas. But in terms of certain purity of legal regulation, this solution would not be pure in our opinion as the Employment Act does not affect the very basic labour relations, in which dependent work is realized.

Working Conditions

The regulation of working hours and rest periods is reflected in part IV, provisions of Sections 78 to 100 of the Labour Code (working hours and rest periods), further in part IX, provisions of Sections 211 to 223 (leave). In the same time, the provisions of Section 78 par. 1 subsection a) to f), k) a l), Section 79 par. 1, Section 79a, Section 82, Section 83, Section 84a, Section 85 par. 2 and 3, Section 86 par. 3, 88 par. 1 and 2, Section 90, Section 90a, Section 92 par. 1, 3 and 4, Section 93 par. 2 sentence two and par. 4, Section 94, Section 96 par. 2 as well as Section 213 par. 1, Section 217 par. 4 (as regards parental leave), Section 218 par. 1, and Section 222 par. 2 sentence one and par. 4 are in accordance with the provisions of Section 363 par. 1 such provisions, which transpose the relevant EC regulations. In accordance with the provision of Section 2 par. 1 sentence two of the Labour Code, one may not depart from these provisions except for derogation in favour of the employee. In my opinion, this regulation is compatible with the rules defined by the Directive. A certain problem may be the examination of the issue whether the total weekly working hours laid down in the Directive No. 93/104/EC means working hours including the overtime work in total – i.e. a sum of all possible work engagements of an individual – or a limit of working hours with inclusion of the overtime work laid down for one employment relationship. A more general conclusion is getting closer to the first one of the interpretations. The logics of this interpretation may be seen also in the fact that the total limit of work engagement is not only to protect the employee and provide space for his rest but also in general provide space for solution of employment issues – the concerned limit opens space for employment of other people. In our opinion, the limit of working hours including the overtime work is defined in our legal regulation in the latter meaning. This conclusion may no longer be deduced from an express provision of Act as it used to be on the original Labour Code when it followed from Section 69 of the original Labour Code that when an employee entered into several employment relationships, the rights and obligations ensuing from them were considered individually unless the Labour Code or other legal regulations determined otherwise. We are still able to deduce from the provision of Section 78 of the current Labour Code that all definitions of legal terms in the area of working hours are defined in the relationship employee-employer and not as a summary of all work engagements. In addition, the limit of working hours according to our legal regulation may not include the working hours ensuing from an agreement to perform work or from an agreement to complete a job.

Protection of young people has been fully harmonized and the Directive is reflected in all corresponding provisions – working hours, special working conditions, medical care, ban on child work.

The legal regulation of the fixed-term employment relationship was fully harmonized[13] in the original Labour Code and it is still fully harmonized also in the new one, namely in the provision of Section 39 of the Labour Code while par. 2 to 6 of this provision are considered provisions transposing EC regulations according to Section 363 par. 1 and one may not depart from them except for derogation in favour of an employee (Section 2 par. 1 sentence two of the Labour Code). In this connection, it is necessary to remind that this type of employment relationship is included to the so-called precarious labour relations in EC materials – i.e. those with restricted employee protection. In comparison with this situation, the fixed-term employment relationship in our legal regulation cannot be considered a legal relationship with restricted employee protection as except for its limited term, this employment relationship is governed by the general regulation of the employment relationship and the employee protection is not restricted therein.

The legal regulation of the employment relationship for less working hours is fully harmonized too. In contrast to the characteristics in EC, this employment relationship cannot be considered a “precarious” one with restricted employee protection as also in this case, the general regulation of the employment relationship applies.

Securing the objectives defined in the Council Directive No. 91/533/EEC is reflected in the provision of Section 37 of the Labour Code where the employer is bound by the obligation to notify employees in writing of their fundamental rights and obligations ensuing for the employee from the concluded employment relation-

ship. The quoted provision is also one of those according to Section 363 par. 1 and Section 2 par. 1 sentence two of the Labour Code (see above). Because most essentials required by the quoted Directive are usually included in the arrangement of the employment contract, specification of data required by the Directive in a written employment contract is considered fulfilment of the obligation to inform employees. In certain cases when the relevant concept cannot be regulated by contract, a reference to the relevant provision of legal regulation is sufficient to meet the obligation to provide information. Hence the legal regulation is fully harmonized.

Posting of Employees to Perform Work on the Territory of Another Member State of European Union

For the purposes of implementing the Council Directive No. 96/71/EC concerning the posting of workers in the framework of the provision of services, new regulation of Section 319 (cf. Section 363 par. 1 of the Labour Code) was included into the Labour Code. The regulation is thereby in principle harmonized. Still it is possible to express certain reservation as regards this regulation. According to Section 319 par. 2 of the Labour Code, the rule of the minimum length of annual leave and the rule of maximum wage shall not apply if the period of posting the employee to perform work within the framework of transnational provision of services in the Czech Republic does not exceed 30 days in total per one calendar year. The said exception shall not be applicable if such employee is posted by an employment agency. It is questionable whether the exception from application of the rule of the minimum length of annual leave and the rule of maximum wage, which the Czech legal regulation defined in uniform manner, is fully compatible with requirements of the concerned Directive. The fact is that the Directive specifies possible exceptions in relation to various situations and in various durations. The Directive allows an exception from the rule of the minimum length of annual leave and the rule of maximum wage in two cases:

- the first one is represented by assemblies or first installations of the goods if they form a substantial part of the contract on the goods delivery and are necessary to put the delivered goods into operation and if they are performed by experienced or specialized employees of the supplier undertaking and the time of posting does not exceed 8 days (Article 3 par. 2 of the Directive),
- the other one is a small extent of works to be performed (Article 3 par. 5 of the Directive). The criteria for assessment of works of small scope are to be determined by the Member State that wants to apply the said exception.

In other cases, only one exception from the rule of maximum wage is possible if the period of posting does not exceed one month (Article 3 par. 3 and 4 of the Directive).

In our opinion, the scope of the exceptions as they are formulated in the provision of Section 319 par. 2 of the current Labour Code is wider than acceptable by the examined Directive[14]. If we start from the presumption that the defined period of 30 days per calendar year represents the specification of the "works of small scope", the exception ensuing from the provision of Article 3 par. 5 of the Directive would be used in this way. Within this rule, however, it would not be possible – in our opinion – to post an employee to perform "the first assembly or the first installation of the goods (provision of Article 3 par. 2 of the Directive) as the scope of posting for this purposes is considerably shorter in this case (8 days). On the other hand, it is possible to consider the question whether the scope of works of 30 days per calendar year is a "work of small extent".[15] It is however possible to deduce that the Czech legal regulation did not make use of the possible exception only from the rule of minimum wage according to the provision of Article 3 par. 3 and 4 in the event that the term of posting is not longer than one month in the course of one year (provision of Article 3 par. 6 of the Directive). In consideration of the posting of one month in the course of one year with an exception from the rule of minimum wage (not admitting the exception from the rule of minimum paid leave), a question arises once again whether the diction used in the Czech legal regulation in the provision of Section 319 par. 2 of the current Labour Code is actually consistent with requirements of the Directive. What is the difference between the work of small extent defined by 30 days per calendar year (an exception from the rule of minimum wage and the minimum leave) and the posting for the maximum of one month (only an exception from the rule of minimum wage)?

The current regulation however – much like the legal regulation in the original Labour Code – does not express the requirement of temporary basis of posting, which is the characteristic sing of employee posting within supranational provisions of services. In accordance with judgments of the European Court of Justice (hereinafter referred to as "ECJ")[16], it is not admissible to restrict the duration or frequency of employee posting for supranational provision of services by a general restriction but the requirement of temporality should be expressed.

The negative definition of the scope of the Directive application (provision of Article 1 par. 2 of the Directive) has not been reflected unfortunately – just like in the original legal regulation.

Social Protection of Employees

The regulation of collective dismissals of employees in Section 62 of the Labour Code is fully harmonized with requirements ensuing from the relevant Directive. According to Section 363 par. 1, the provision of Section 62 is considered a provision transposing EC regulations and it is impossible to depart from it pursuant to Section 2 par. 1 sentence two of the Labour Code unless the derogation is in favour of the employee. In our opinion, however, it follows from the nature of this provision that one may not depart from it (Section 2 par. 1 sentence one of the Labour Code).

Social protection of employees upon transfers of undertakings, parts of undertakings, transfers of activities or parts of activities is regulated both in the concept of the Transfer of Rights and Obligations from Labour Relations in the provision of Section 338 et seq. of the Labour Code and with reference to a special legal regulation.[17].

Employee protection in case of employer's insolvency is safeguarded by the very legal regulation included in Act No. 118/2000 Coll., on Employee Protection upon Employer's Insolvency, as amended. The legal regulation is fully harmonized.

Technical and Health Protection of Employees

EC Directives for the area of safety and health protection at work are reflected in a large number of regulations, in particular implementing and technical ones, the examination of which exceeds the scope of this paper. The basic framework is included in part V, in the provisions of Sections 101 to 108 of the Labour Code.

Conclusion

In our opinion, **o**ne may conclude from the abovementioned specific analyses that most issues regulated by the secondary law of EC and concerning performance of dependent work, the Czech legal regulation in the Labour Code is sufficiently harmonized. The precise inclusion of the equal treatment principles and the prohibited discrimination directly to the Labour Code still remains a great problem. The said insufficiency is even more serious due to the fact that the principle of equal treatment and prohibited discrimination represents a fundamental principle of labour law.

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[1] These issues were addressed for example in the work Gregorová, Z., Pracovní právo a právo sociálního zabezpečení [Title in translation: *Labour Law and Law of Social Security*], in Evropský kontext vývoje českého práva po roce 2004, MU, Brno 2006, p. 353 et seq.

[2] These are the following Directives listed in the quoted comment:

Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship,

Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies,

Council Directive 99/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP,

Council Directive 97/81/EC of 15 December 1997 concerning Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC,

Council Directive 94/45/ES of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees,

Council Directive 97/74/EC of 15 December 1997 extending, to the United Kingdom of Great Britain and Northern Ireland, Directive 94/45/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees,

Council Directive 2006/109/EC of 20 November 2006 adapting Directive 94/45/EC on the establishment of a European Works Council or a procedure in Community-scale undertaking and Community-scale groups of undertakings for the purposes of informing and consulting employees, by reason of the accession of Bulgaria and Romania,

Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community,

Article 13 of the Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees,

Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses,

Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services,

Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC,

Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time,

Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work,

Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship,

Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work,

Council Directive 89/656/EEC of 30 November 1989 on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace (third individual directive within the meaning of Article 16 (1) of Directive 89/391/EEC),

Council Directive 92/85/EEC of 19 November 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC),

Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women,

Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions,

Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions,

Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation,

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin,

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation,

Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organization of the working time of persons performing mobile road transport activities,

Council Directive 2005/47/EC of 18 July 2005 on the Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector,

Article 15 of the Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees.

[3] Bělina, M., Pichrt, J., Nad návrhem nového zákoníku práce [Title in translation: *On the Draft of the New Labour Code*], Právní rozhledy No. 11/2005, p. 384.

[4] Knapp, V., O právu kogentním a dispozitivním (a také o právu heterogenním a autonomním) [Title in translation: *About Mandatory and Directory Law (and also about Heterogeneous and Autonomous Law*], Právník No. 1/1995, p. 1.

[5] The judgment of the Constitutional Court was published under No. 116/2008 Coll., for details on the mentioned see p. 1470, clause 199.

[6] Ibid.

[7] The provision of Section 363 paragraph 1 of the Labour Code reads: "The provisions by which the transposition of the EC law is implemented are: Sections 2 par. 6, Section 14 par. 2, Section 16 par. 2 and 3, Section 30 par. 2, Section 37 par. 1 to 4, Section 39 par. 2 to 6, the introductory wording in Section 41 par. 1 and in its subsections c), d), f) and g), Section 47 consisting in the wording "where on termination of maternity leave (in the case of a female employee) or on termination of parental leave (in the case of a male employee) in the scope for which a female is entitled to take maternity leave, such employee returns to work, the employer shall place this employee to his/her original job and workplace", Section 53 par. 1 consisting in the wording "the employer may not give notice to his employee " and subsection d), Sections 62 to 64, Section 78 par. 1 subsections a) to f), k) and l), Section 79 par. 1, Section 79a, Sections 82, 83, 84a, Section 85 par. 2 and 3, Section 86 par. 3, Section 88 par. 1 and 2, Sections 90, 90a, Section 92 par. 1, 3 and 4, Section 93 par. 2 sentence two and par. 4, Section 94, Section 96 par. 2, Sections 101, 102, Section 103 par. 1 subsections a) to h), j) and k) to the end of par. 1, par. 2 to 5, Section 104, Section 105 par. 1 consisting in the wording "if an industrial injury occurs, the employer within whose undertaking this injury has occurred shall investigate the causes and circumstances of the injury, par. 3 subsection a), 4 and 7, Section 106 par. 1 to 4 subsections a), c), d), f) and g), Section 108 par. 2, 3, 6 and 7, Section 110 par. 1, Section 113 par. 4, Section 136 par. 2, Section 191 consisting in the wording "an employer shall excuse the absence of an employee from work during a period of taking care for a sick child whose age is below 10 years or taking care for another household member according to Section 115 of the Civil Code in the cases laid down in Section 25 of the Sickness Insurance Act or in Section 39 of the Sickness Insurance Act and for a period of taking care of a child younger than 10 years due to the reasons laid down in Section 25 of the Sickness Insurance Act or in Section 39 of the Sickness Insurance Act or due to the reason that a natural person who otherwise takes care of a child could not take care of this child because this person underwent a medical examination or treatment in a healthcare facility and this could not be arranged outside the employee's working hours", Sections 195, 196, Section 197 par. 3 resting in the wording "parental leave under subsection 1 is granted as of the day when the child has been taken into foster care until the day when the child reaches the age of three years. If a child has been taken into foster care after the attainment of three years of age but before reaching the age of seven years, there shall be the right to parental leave of 22 weeks. If a child has been taken into foster care before it is three year old and parental leave of 22 weeks would expire after the child reaches three years of age, parental leave shall be granted for 22 weeks as of the day of taking the child into foster care", Section 198 par. 1 to 3 as regards parental leave, Section 199 par. 1, Section 203 par. 2 subsection a), Section 213 par. 1, Section 217 par. 4 as regards parental leave, Section 218 par. 1, Section 222 par. 2 sentence one and par. 4, Section 229 par. 1 consisting in the wording "vocational practice shall be considered as work performance for which an employee is entitled to a wage or salary", Section 238 par. 2 and 3, Section 239, Section 240 par. 1, Section 241 par. 1 and 2, 245, Section 246 par. 2 sentence one, Section 276 par. 1 sentence one and par. 2 to 5, Section 277 consisting in the wording "the employer shall create at own costs the conditions, which will enable the employees' representatives the proper exercise of their function", Section 278 par. 1 to 3, par. 4 sentences two and three, Section 279 par. 1 subsections a), b), e) to h) and par. 3, Section 280 par. 1, Section 281 par. 5, Sections 288 to 299, Section 308 par. 1 as regards its introductory wording and subsection b), Section 309 par. 4 and 5, Section 316 par. 4 consisting in the wording "the employer may not require from an

employee the information in particular of" and subsections a), c), d), e), g) and h) and further in the wording "the above shall not apply where there is a cause for it consisting in the nature of work to be performed provided that the requirement is adequate", Section 319, Section 321 par. 3, Section 338 par. 2, Section 339, Section 340 and Section 350 par. 2 (Section 2 par. 1 sentence four)."

[8] Judgment No. 116/2008 Coll., p. 1471, clause 204.

[9] See the work specified in the note No. 1.

[10] The following Directives are concerned:

Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women,

Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

[11] For more details concerning the adoption of the Antidiscrimination Act see for example Dvorská, O., Zásada rovného zacházení, zákaz diskriminace a jejich uplatňování v pracovním právu, disertační práce [Title in translation: *Principle of Equal Treatment, Prohibited Discrimination and their Application in Labour Law, Doctoral Thesis*], 2008 published at http://is.muni.cz/thesis.

[12] The said manner would be easier also due to the fact that an important amendment of the Labour Code is under preparation.

[13] For details see Gregorová, Z., Některé proměny pracovního poměru na dobu určitou [Title in translation: *Certain Changes of the Employment Relationship for Definite Period of Time*], in sborník Pocta Antonínu Kandovi, Vydavatelství a nakladatelství Aleš Čeněk, s.r.o., Plzeň 2005, p. 288 et seq.

[14] The quoted provision determines that the provision on minimum wage per calendar year and on minimum wage, relevant guaranteed minimum wage and extra pay for overtime work shall not apply if the term of posting an employee to perform services in the Czech Republic does not exceed in total the period of 30 days per calendar year. This shall not apply if the employee is posted to perform work within transnational provision of services by an employment agency.

[15] The original wording of the Directive uses the term "the amount of work to be done is not significant".

[16] See judgment in C-215/01 (Bruno Schnitzer), CELEX 62001J0215, in which ECJ stated: "Services according to the Contract may cover services of wide nature, including those provided on long-term basis, even for several years if for example the mentioned services are provided in connection with construction of a large building… None of the provisions of the Contract allows to generally determine the duration or frequency, on the basis of which the provision of a service of a certain type of services in another Member State cannot be longer; such restriction cannot be considered a provision on services according to the Contract…"

[17] For details see Gregorová, Z., Převod podniku a přechod práv a povinností z pracovněprávních vztahů v komunitárním a českém pracovním právu [Title in translation: *Transfer of Undertaking and Passage of Rights and Obligations from Labour Relations in Community and Czech Labour Law*], Právník No. 10/2008 p.