DOI: 10.7251/GFP2111054W

UDC: 343.41(497.4):616.98:578.834

Originalni naučni rad

Datum prijema rada:
30. jun 2021.

Datum prihvatanja rada:
16. jul 2021.

COVID 19 – Terminanition of Employment Contracts Due to Business Reasons

Abstract: The article deals with Slovenian regulation of the termination of employment contracts due to business reasons. According to settled case law, any termination of an employment contract is ultima ratio of the employer. In addition to pre-redundancy alternatives in ZDR-1 and a review of measures from the PKP packages, the options offered to employers by the state to prevent redundancies, at least at the moment do not provide a sufficient basis for the legality of redundancies solely because of an economic crisis due to the pandemic.

Key words: termination of employment contract, SARS-CoV-2 virus (COVID-19), PKP packages.

Nana Weber
Docent, Attorney, Founding and Managing Partner in Law Firm Weber o.p. – d.o.o.

1. INTRODUCTION

The period from 13th March 2020 onwards has been a fairly difficult period for both employees and employers in Slovenia, especially due to the coronavirus epidemic, consequences of which were that many employees were virtually unable to carry out their work or were (at least) temporarily forced to work on a reduced scale. Slovenia has within the framework of intervention legislation introduced various state incentives, tax or otherwise, to alleviate the burden of employers, however redundancies of employees have been and are still a very common occurrence.

In this article, which focuses on the field of individual dismissals of employment in the private sector, we will mainly deal with the question whether the termination of employment contracts due to business reasons, caused by the epidemic of the Coronavirus and its consequences on the business sector, is legal or not, taking into account the many government measures and incentives offered to employers to address the situation within the so-called "Proti-Korona Paketi" or "Anti-Coronavirus (Legislative) Packages" (hereinafter referred to as "PKPs"), of which to this day there have been eight passed and enacted by the Slovenian parliament.

At this point, it should be emphasized that the part of this article that refers to the presentation of actual incentives and measures, adopted by under each legislative PKP, we will focus

exclusively on incentives, which were and some still are intended for the general segment of (practically) all or at least a fairly wide range of employers.

2. BUSINESS REASONS FOR TERMINATION OF AN EMPLOYMENT CONTRACT IN SLOVENIAN LEGAL SYSTEM AND CASE LAW

Employment Relationships Act (hereinafter referred to as "ZDR-1")[1] in the first paragraph of Article 89 sets out five reasons for regular or so-called ordinary termination of an employment contract:

- cessation of the need to perform certain work according to the conditions of the employment contract for economic, organisational, technological, structural or similar reasons on the employer's side (hereinafter: business reasons), or
- failure to attain the expected performance results because the employee has failed to carry out work in due time, professionally or with due quality, or failure to fulfil the job requirements provided by and Act and other regulations issued on the basis of an act, for which reason the employee fails to fulfil or is unable to fulfil the contractual or other obligations arising from the employment relationship (hereinafter: reason of incompetence);
- violation of a contractual obligation or other obligation arising from the employment relationship (hereinafter: reason of misconduct); ,
- incapacity to carry out the work under the conditions set out in the employment contract owing to disability in accordance with the regulations governing pension and disability insurance or with the regulations governing vocational rehabilitation and the employment of disabled persons;
- unsuccessful completion of a probationary period.

It is of crucial importance for all the listed reasons that they prevent the continuation of work under the conditions of the employment contract (second paragraph of Article 89 of the ZDR-1).[2]

We will now take a closer look at the termination of employment contract due to business reasons (first indent of the first paragraph of Article 89 of the ZDR-1). The essential element in defining business reasons is that the cause or reasons for the termination the contract are on the side of the employer, not the employee (as opposed to other grounds for dismissal set out in the first paragraph of Article 89 of the ZDR-1) and that on the side of the employer there has ceased the need to perform certain work under the terms of the employment contract with the employee concerned.[3]

---

[1] Employment Relationships Act (ZDR-1), *Official Gazette of the Republic of Slovenia*, No. 21/13, 78/13 - amended, 47/15 - ZZSDT, 33/16 - PZ-F, 52/16, 15/17 - Decision of the Constitutional Court, 22/19 - ZPosS, 81/19 and 203/20 – ZIUPOPDVE.

[2] The aforementioned second paragraph reads as follows: "(2) The employer may cancel the employment contract only if there is a substantiated reason referred to in the preceding paragraph which prevents the continuation of work under the conditions set out in the employment contract."

[3] Bečan, I., Belopavlovič, N., Korpič Horvat, E., Kresal B., Kresal Šoltes K., Mežnar Š. *et al*. (2016). Zakon o delovnih razmerjih (ZDR-1) s komentarjem. Ljubljana: IUS Software, GV založba, 519; Štelcer N. (2014). *Veliki komentar ZDR-1*. Maribor: Poslovna založba MB, založništvo d.o.o., p. 442.

It should be clarified that the employee can regularly (or ordinarily) terminate the employment contract without any explanation in accordance with the first paragraph of Article 83 of the ZDR-1. However, the employee can also extraordinarily terminate an employment contract for the reasons specified in Article 111 of the ZDR-1:

- the employer has failed to provide him with work for more than two months and has also failed to pay him the statutory wage compensation,
- he has not been able to perform his work due to a decision by a competent inspection service on the prohibition of performing the working process or on the prohibition of using means of work for more than 30 days, and the employer has failed to pay him the statutory wage compensation,
- the employer has failed to pay him his salary or has paid him a substantially lower salary for more than two months,
- the employer has failed to pay him his salary twice in succession or within a period of six months taking into consideration the legally and/or contractually stipulated period,
- the employer has failed to pay in full social security contributions three times in succession or within a period of six months,
- the employer has failed to ensure the employee's safety and health at work and the employee has previously requested that the employer eliminate an immediate and unavoidable danger to employee's life and health,
- the employer has failed to ensure the employee equal treatment in accordance with Article 6 of the ZDR-1,
- the employer has failed to ensure protection against sexual or other harassment or bullying in the workplace in accordance with Article 47 of the ZDR-1.

The objective reasons on the side of the employer which eliminate the need to perform certain types of work are primarily conditions on the relevant market, introduction of new technologies, changes in the organization of work, abolition of working posts or positions, abolition of working or organisational units and similar situations.[4] It is also important that to emphasise, that it is a matter of reducing the need to perform certain working tasks or working posts, that are set out under the terms, already established in the employment contract. This means that it is not necessary that the need to perform the work of a certain employee ceases in absolute terms, but the business reason for termination also includes situations when the need to work under certain (contractually agreed) conditions as such ceases, but the employer may still need this work to be performed, but under modified conditions, different from those previously agreed upon in the employment contract.[5] The employee is obliged to perform the work for which he has committed himself under the employment contract and under the agreed conditions as arising from the concluded employment contract, therefore the employer cannot unilaterally change the definition or types of work and its conditions (except exceptionally and temporarily in cases, provided by the ZDR-1).[6]

---

[4] Krašovec, D**.** (2013). *Novi veliki komentar Zakona o delovnih razmerjih in reforme trga dela*. Ljubljana: Založba Reforma d.o.o., 413.

[5] Bečan, Belopavlovič, Korpič Horvat, Kresal, Kresal Šoltes, Mežnar, *et al*. (2016), 520.

[6] *Ibid.*

The minimum content of the notice of termination of an employment contract by the employer is contained in the second paragraph of Article 87 of the ZDR-1, which stipulates that the employer must explain the actual reasons for termination of the employment contract in witing in the written notice of termination of the employment contract. This means that the employer must in the aforementioned notice state facts, factual circumstances or actual conduct of the employee that are reasons for the dismissal which must be so detailed in such a manner, that the facts are clear to both to the employee and to the employer himself.[7]

It is clear from the case law that the courts in adjudicating the legality of the notice of termination of the employment contract do not assess the business and organizational decisions of the employer as such.[8] When adjudicating the existence of a substantiated business reason for termination of an employment contract, the Slovenian courts can only assess whether this proposed reason is fabricated or "fake" (i.e. a sham or a ruse).[9] Several court decisions emphasize that termination due to business reasons is in fact an autonomous decision of the employer, in which the courts cannot intervene, but of course the business reason must not be fictitious and must not be a cover for concealment of some other reason.[10]

Among the arguments for this view, the court decisions highlight the right to free enterprise or free economic initiative from Article 74 of the Constitution of the Republic of Slovenia. For example, the Supreme Court of the Republic of Slovenia (hereinafter referred to as "the Supreme Court") in a judgement VIII Ips 245/2017 from the 16th of January 2018 explains that the notice of termination of an employment contract is an autonomous decision of the employer, which is based on the employer's assessment that he cannot perform the work with such a large number of employees, and this notice means that the employer will reduce costs in a certain segment of his business operations by reducing employment. Court's establishing the precise facts in this regard and its assessment that the employer possibly did not correctly or expediently make such a decision would go beyond the court's right to adjudicate, as it would excessively (or disproportionately) limit the employers constitutional right to free economic initiative (Article 74 of the Constitution of the Republic of Slovenia).

Furthermore, the Supreme Court in its decision VIII Ips 82/2017 from the 19th of December 2017 has explicitly stated that if, besides of termination of the employment contracts, other suitable options exist, that at the same time do not endanger the effective business activity of the employer, no substantiated business reasons can be assessed by the

---

[7] *Ibid*., 506.

[8] Legal theory also emphasizes that the reason for termination of the employment contract for business reasons is a matter of the employer, the court assesses only the substantive and formal requirements for lawful termination of the employment contract (the latter goes beyond the purpose of this article, so we do not deal with them in detail) – Cvetko, A., Kalčič M., Klampfer M., Korpič-Horvat E., Novak M., Senčur-Peček D. (2004). *Pogodba o zaposlitvi in podjetniška kolektivna pogodba*. Ljubljana: GV Založba, 246–247.

[9] See, for example, the judgments of the Higher Labor and Social Court Pdp 898/2012, 4. November 2012 and the judgment of the Supreme Court of the Republic of Slovenia VIII Ips 239/2016, 21. February 2017 and VIII Ips 245/2017, 16, January 2018.

[10] Judgement of the Supreme Court of the Republic of Slovenia, VIII Ips 205/2014, 15. December 2014.

court, that would justify such a termination. Therefore, such a termination is considered unlawful. In the aforementioned case the Supreme Court even stated that the employer has the right to free economic initiative, guaranteed by the Constitution of the Republic of Slovenia – this also includes downsizing and redeployment of the workforce –, but of course this right is not absolute in its nature, as it must be balanced with (adverse) rights of the employees.[11]

In one of its last judgments, which can be considered as present as "classic", the Higher Court[12] stated that the termination of the working post and thus the cessation of the need to perform certain work under the terms of the previously concluded employment contract is to be considered as a business reason for its termination from the first indent of the first paragraph of Article 89 of ZDR-1:"In assessing this reason, it is not essential whether the termination of the working post was reasonable or sensible and whether or not it will actually contribute to the reduction of costs or streamlining of business operations in the future. It is an autonomous decision of the employer, which the court cannot intervene in, but it is true that the business reason must not be fictitious or be concealing some other reason. A fictitious or fabricated reason for termination can be neither genuine nor justified, and termination for such a reason is illegal. Carrying out a reorganization procedure just as a mere formality, the cause of which are not objective business needs, but the exclusion of a certain person for other (subjective) reasons, constitutes an abuse of the statutory reason for termination, which can only result in such a notice of termination of the employment contract being considered as unlawful (contrary to law)."

It should be noted, however, that some courts in Slovenia are not in favour of the termination of working posts as an absolute proof that the need to perform certain work has ceased, and that the notice of termination of the employment contract due to business reasons is therefore justified. For example, in one of the courts cases[13] it is written:

"In the notice of the termination of the employment contract the employer merely stated that due to the termination of the working post where the employee was previously working, the need to work at that post had ceased. If the mentioned was sufficient, such disputes would be very simple. However, the Court of Appeal points out that the mere fact of termination of a working post is by no means sufficient to establish the existence of a substantiated business reason for termination of an employment contract.

The Court of Appeal therefore agrees with the Court of First Instance that the economic reason for the termination of the employment contract is unfounded. The employer did not prove his allegation in the notice of termination that the working post of the employee had caused him such high costs that he could no longer bear them. The assessment

---

[11] In this case the employer claimed that the business reason was given because there was a decrease in turnover and the need to reduce the number of employees due to the redistribution of tasks of certain jobs to other employees. The Supreme Court stated that the circumstance that the employer in the period when terminating employment contracts for business reasons (because it shows the need to reduce the number of employees) employed fixed-term employees, hired agency or student workers, is not irrelevant. Maintaining the employment of employees has, in principle, an advantage over providing the work of hired workers who are not employed by the employer when the employer decides to reduce or streamline operations. The case was remanded for retrial by the Supreme Court.

[12] Judgement of the Higher Labor and Social Court, Pdp 8/2020, 5. March 2020.

[13] Judgement of the Higher Labor and Social Court, Pdp 520/2020. 22. October 2020.

of this allegation as such cannot be seen as an interference by the court with the right of free economic initiative of the employer, as the appeal tries to show. The Court of First Instance did not go into the assessment of the appropriateness of the notice of termination, but admissibly examined whether the employer's business really required urgent cost reductions – or whether the employee's working post had caused such costs that the defendant could no longer bear them."

Here we should point out three questions that often appear in practice:

1. Is it necessary to amend the act on systematization (work post classification) or to adopt a new one for the employer to prove the validity of business reasons and the lawfulness of such reasons for termination of the employment contract?

2. Is the termination of the employment contract lawful even though the scope of the employee's work remains largely the same and the change in work is the omission of only one working task – or are even minimal changes in the content and scope of the employee's duties valid business reasons for termination?

3. Is notice of a termination of an employment contract for business reasons unlawful if the employer terminates the employment contract for an indefinite period of time for a certain employee and at the same time employs another employee for the same sort of work but for a definite period of time?

1. To answer the question, we should point out that systematization (work post classification) is one of the most important internal organizational systems in a company. The document in which the work post classification is written is the act on work post systematization, which represents the basic general act of every employer. In accordance with the second paragraph of Article 22 of the ZDR-1, the employer is obliged to adopt a general act which determines the conditions for performing work at an individual workplace or work post, or for an individual type of work. This obligation does not apply to a so-called small employer (employer who employs ten or fewer employees – see the third paragraph of Article 5 of the ZDR-1).

The act on systematisation of work posts therefore contains a description of the work post and positions at the employer. Employers often refer to it as the Rules on the Systematisation of Work Posts and it usually contains information on the type of work, a description of the work and the conditions for performing work at an individual work post. Personnel and organizational-technical data on the work post, as well as data for work post identification are also useful.

The work post description contained in the work post classification includes a list of all the tasks necessary for the work process to take place in the workplace. The working post description contains the requirements that the employee must meet to achieve the goals of the organization.

ZDR-1 does not stipulate anything in relation to whether the employer must change the act on systematisation in the case of an alleged business reason for termination, but the answer to the question was given by case law. According to the established case law, the amendment of an existing or the adoption of a new act on systematization is not a condition for reorganization, nor for the lawfulness of notice of regular (or ordinary) termination of an employment contract. However, the employer must prove the actual cessation of the need for work of the employee, whose employment contract is to be terminated.[14]

[14] Judgement of the Higher Labor and Social Court, Pdp 379/2017, 5. October 2017.

Namely, the amendment to the act on systematisation is not the only or indisputable proof of the cessation of the need to perform the work of certain employees, but is only one of the otherwise important factors in determining the actual needs of the employer for the employee's work. [15]

2. The Supreme Court has clarified in the decision VIII Ips 26/2020 from 24th of September 2020 that minimal changes in the content and scope of the employee's working tasks do not constitute a valid business reason for termination of the employment contract for business reasons: "The reorganization of the work process in itself does not justify the termination of employment for business reasons. It is not irrelevant whether the tasks that the employee no longer performed after the change, because they were transferred (and appears to have been extensively upgraded with other working tasks) were actually preformed or to what extend they were preformed, taking into account the previous organization and practice of the employer (scope and direction of operation). If these working tasks in addition to the other tasks performed by the employee, to the extent that they were performed, represented a negligible amount of work of the employee, and there was only the transfer of these tasks for the purpose of different organisation, but substantive changes in the performance of these tasks, and at the same time therefore also different requirements of education, it cannot be easily concluded that the needs of the worker for her work have ceased under the conditions from the previous employment contract."

Case law is in no way in favour of such conduct by the employer. Already in 2006, the Supreme Court took the position that an employer cannot terminate an employment contract for an indefinite period of time for business reasons if the employer employs a fixed-term employee for one month at the same work post or work position and continues to conclude new (consecutive) contracts with the same employee on fixed-term employment (even due to increased workload).

If the needs for work were actually reduced (according to the Supreme Court) the employer would no longer conclude new (consecutive) employment contracts with the same employee under a fixed-term employment contract and would keep the employee employed in the same job position for an indefinite period. The different conduct is considered an abuse of the institute of termination of the employment contract for business reasons.

The case law has for quite a long time allowed employers to lay off employees for business reasons, while at the same time hiring student or agency workers for the same work. This was assessed as an admissible and autonomous business decision of the employer or an aspect of the rationalization of his business operations, which did not result in the unlawfulness of the notice of termination of the employment contract. Newer case law however is not in favour of this view. In its decision VIII Ips 82/2017 of 19th December 2017, the Supreme Court took the following position:

---

[15] Judgement of the Supreme Court of the Republic of Slovenia, VIII Ips 224/2012, 18. December 2012, which refers to the case law of the Supreme Court of the Republic of Slovenia in this regard (Judgement of the Supreme Court of the Republic of Slovenia, VIII Ips 82/2007, 26. June 2007; Judgement of the Supreme Court of the Republic of Slovenia, VIII Ips 411/2008, 23. February 2010; Judgement of the Supreme Court of the Republic of Slovenia, VIII Ips 69/2010, 19. December 2011; Judgement of the Supreme Court of the Republic of Slovenia, VIII Ips 275/2010, 5. September 2011 and decision of the Supreme Court of the Republic of Slovenia, VIII Ips 115/2009, 15. February 2011 and decision of the Supreme Court of the Republic of Slovenia, VIII Ips 207/2010, 20. December 2011).

"If, instead of terminating the employment contracts, there are other suitable options without damaging the efficient operation of the employer, it is not possible to establish a valid business reason that prevents the continuation of work under the terms of the employment contract.

Therefore, the fact that the employer employs fixed-term employees, hires agency workers or students on equal terms during the period when he terminates the employment contracts of employees for business reasons (because he shows the need to reduce the number of employees) is not irrelevant.

Maintaining the employment of employees has, in principle, an advantage over securing the work of employees who are not employed by the employer, when the employer decides to reduce or rationalize his business operations."

At the end of this chapter, it is important to mention the intervention legislation that at least for a short time allowed so-called forced retirement. The adoption of PKP7[16] changed Article 89 of the ZDR-1[17] thereby providing an additional new reason for a lawful notice of termination of an employment contract for business reasons.

With PKP7, the employer was given the opportunity to terminate the employment contract for business reasons without a valid reason, when the employee fulfilled the condition of:

- 15 years of insurance period and 65 years of age or
- 40 years of pension period without additional purchase and 60 years of age.

We believe that the legislator with this new rule (or exception) has essentially degraded the basic rule of labour law which states that it is not possible to terminate an employment contract without a good reason. Not to mention the judgment of the Court of Justice of the EU from 2012, from which it is clear that compulsory retirement at a certain age constitutes unlawful discrimination due to age, which is not permissible.

In Case C-286/12[18] the European Commission by its action claimed that the Court of Justice of the EU should state that, by adopting a national scheme requiring the compulsory retirement of judges, public prosecutors and notaries upon reaching the age of 62, which gives rise to a difference in treatment on grounds of age, which is not justified by legitimate objectives and which, in any event, is not appropriate or necessary as regards the objectives pursued. The Court of Justice of the EU held, that Hungary has failed to fulfil its obligations under Articles 2 and 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.[19]

---

[16] COVID-19 Second Wave Mitigation Measures Act (ZIUOPDVE). *Official Gazette of the Republic of Slovenia*, no. 175/20, 203/20 - ZIUPOPDVE, 15/21 - ZDUOP, 51/21 - ZZVZZ-O and 57/21 - odl. US.

[17] Similarly, redundancies in the public sector were changed by sectoral laws - Article 156 of the Public Services Act (Civil Servants Act (PPA). *Official Gazette of the Republic of Slovenia*, No. 56/02, 110/02 - ZDT-B, 2/04 - ZDSS-1, 50/04 - ZPol-C, 23/05, 62/05 - odl. US, 75/05 - odl. US, 113/05, 21/06 - odl. US, 68/06 - ZSPJS-F, 131/06 - odl. US, 33/07, 65/08, 69/08 - ZTFI-A, 69/08 - ZZavar-E, 40/12 - ZUJF, 63/13 - ZS-K, 158/20 - ZIntPK-C, 203/20 - ZIUPOPDVE, 28/21 - odl. US

[18] *European Commission v Hungary*, 2012. Judgment of the Court (First Chamber) of 6. November 2015 (Case C-286/12, ECLI:EU:C:2012:687).

[19] *OJ* 2000 L 303, 16. Court of Justice of the EU especially examined the objective, invoked

The decision of the Constitutional Court of the Republic of Slovenia, that stayed this legislative misstep, evokes hope, as it retained the said regulation by its decision no. UI-16/21-11 of 18th of February 2021.The Constitutional Court of the Republic of Slovenia also decided to suspend the effect of already served terminations of employment contracts on the basis of amended legislation until the final decision of the court.

Articles 98-103 of the ZDR-1 specifically lay down rules for dismissal of a large number of employees for business reasons.

The definition of a larger number of employees depends on the number of employees at the employer. ZDR-1 instructs that an employer who finds that work will become unnecessary for 30 days for business reasons:

- at least 10 employees of an employer employing more than 20 and less than 100 employees,
- at least 10 per cent of the employees of an employer employing at least 100 but less than 300 workers,
- at least 30 employees of an employer employing 300 or more employees,
- is obliged to draw up a redundancy scheme or programme.

An employer employing less than 20 workers, does not need to draw up the redundancy scheme, nor does an employer employing more than 20 workers, if within a period of 30 days, the work becomes unnecessary to a lesser extent than prescribed.

The employer has the duty to inform the trade unions in writing as soon as possible about the reasons for the cessation of labour needs, the number and categories of all employees, the envisaged categories of redundant employees, on the estimated period within which the need for work will cease and on the proposed criteria for determining redundancies. In advance, in order to reach an agreement, the employer has to consult with the trade unions on the proposed criteria for determining redundancies, and in preparing a redundancy scheme on possible ways to prevent and limit redundancies and on possible measures to prevent and mitigate possible adverse consequences. A copy of the written

by Hungary, of establishing a more balanced age structure in the area of the administration of justice. In that regard, while recognising that the national legislation may facilitate, in the short term, the access of young lawyers to the professions concerned, the Court pointed out, however, that the immediate, apparently positive, effects are liable to cast doubt on the prospects of achieving a truly balanced 'age structure' in the medium and long term. While, in the course of 2012, the turnover of personnel in the professions concerned will be subject to a very significant acceleration, as eight age groups have been replaced by one single age group (that of 2012), that turnover rate will be subject to an equally radical slowing-down in 2013, when only one age group will have to be replaced. In addition, that rate of turnover will become slower and slower as the age-limit for compulsory retirement is raised progressively from 62 to 65, even leading to a deterioration in the prospects for young lawyers to enter the professions of the judicial system. It follows that the contested national legislation is not appropriate to achieve the pursued objective of establishing a more balanced 'age structure'. Establishing that the national legislation gives rise to a difference in treatment on grounds of age which is neither appropriate nor necessary to attain the objectives pursued and therefore does not comply with the principle of proportionality, the Court concludes that Hungary has failed to fulfil its obligations under Council Directive 2000/78/EC, available at https://curia.europa.eu/jcms/upload/docs/application/pdf/2012-11/cp120139en.pdf (11.5.2021).

notice to the trade unions must be sent by the employer to the Employment Service of Slovenia (hereinafter referred to as "ESS") (Article 99 of the ZDR-1).

In accordance with Article 100 of the ZDR-1 the employer must notify the ESS in writing of the procedure for determining the cessation of work needs of a larger number of employees, about the consultation with the trade unions, about the reasons for cessation of work needs, about the number and categories of all employees, about the envisaged categories of redundant employees and about the envisaged deadline, in which the need for work will cease. The employer must also send a copy of the written notice to the trade unions. The employer may terminate the employment contracts of redundant employees, taking into account the adopted redundancy scheme, but not before the expiry of the 30-day period from the fulfilment of the obligation to inform the ESS.

The role of the ESS is defined in Article 103 of the ZDR-1. The employer is obliged to consider and take into account any proposals of the ESS on possible measures to prevent or minimize the termination of employment of employees and measures to mitigate the harmful consequences of the proposed termination of employment. At the request of the ESS, the employer may not terminate the employment contract of employees before the expiry of the 60-day period from the fulfilment of the obligation to inform the ESS.

The redundancy scheme must contain:

- the reasons for the cessation of employee's labour needs,
- measures to prevent or, as far as possible, limit the termination of employee's employment, with the employer having to examine the possibility of continuing employment under changed conditions,
- list of redundancies,
- measures and criteria for the selection of measures to mitigate the harmful consequences of termination of employment, such as: offering employment with another employer, providing financial assistance, providing assistance for starting a self-employed activity, purchase of additional insurance period for retirement. (Article 101 of the ZDR-1).

The employer formulates a proposal of criteria for determining redundant employees. In agreement with the trade union at the employer, the employer may, instead of the criteria from the collective agreement, formulate its own criteria for determining redundant employees.

In determining the criteria for determining redundant employees, the following must be taken into account in particular:

- professional education of the employee or qualification for work and the necessary additional knowledge and abilities,
- work experience,
- work performance,
- length of the period of service,
- health condition,
- the social status of the employee, and
- that he or she is the parent of three or more minor children or the sole breadwinner of a family with minor children.

In determining the employees whose work becomes unnecessary, employees with poorer social status shall have priority in maintaining employment with the same criteria. Temporary absence of a employee from work due to illness or injury, care of a family member or a severely disabled person, parental leave and pregnancy may not be a criterion for determining redundant employees (Article 102 of the ZDR-1).

If the employer does not comply with the rules of the ZDR-1 regarding the procedure of termination of the employment contract for a large number of employees, a fine of EUR 3,000 to 20,000 is prescribed for the employer, a legal entity, sole proprietor or self-employed individual (item 18 of the first paragraph of Article 217 of the ZDR-1), EUR 1,500 to 8,000 for a small employer (with ten or less employees), a legal entity, a sole proprietor or an individual who independently performs a business activity (second paragraph of Article 217 of the ZDR-1 in connection with item 18 of the first paragraph of Article 217 of the ZDR-1), EUR 450 to 1,200 for an individual employer (third paragraph of Article 217 of the ZDR-1 in connection with item 18 of the first paragraph of Article 217 of the ZDR-1) and EUR 450 to 2,000 for the responsible person of the employer of the legal entity and the responsible person in the state body or local community (fourth paragraph of Article 217 of the ZDR-1 in connection with item 18 of the first paragraph of Article 217 of the ZDR-1).

3. MEASURES IN THE ZDR-1, AIMED AT MAINTAINING EMPLOYMENT

3.1. Temporary lay-off ("waiting for work")

Article 138 of the ZDR-1 stipulates that the employer may temporarily, but for a maximum of six months in an individual calendar year, send the employee in writing to wait for work at home. In this case, the employee has the right to salary compensation in the amount of 80 percent of the base for his usual salary and the duty to respond to the employer's call in the manner and under the conditions as follows from the written referral.

During the temporary lay-off, the employee is obliged educate himself, which is specifically presented in section 2.3 of this chapter.

3.2. Performing other (appropriate or suitable) work

In accordance with the Article 33 of the ZDR-1, the employer may order the employee to temporarily (for a maximum of three months in a calendar year) perform "other appropriate work", namely in the following cases: temporarily increased workload at another work post or another type of work at the employer, temporarily reduced workload at the work post or within the type of work performed and in order to replace a temporarily absent worker.

"Other appropriate work" is a type of work for which the employee meets the required preconditions and for which the same type and level of education is required, as required for the performance of work for which the employee has an employment contract, and for working hours as agreed for the work for which the employee has an employment contract and the place of work is not more than three hours' drive from the employee's place of residence in both directions by public transport or organized transport by the employer.[20]

[20] Art. 33, para. 4, ZDR-1.

A small employer with ten or less employees however may in such cases order the employee to perform so-called "other suitable" work". "Other suitable work" is considered as work for which the same type and at most one level lower education is required than is required for the performance of work for which the employee has an employment contract and for working time as agreed for the work for which the employee has a contract on employment, and the place of performance of work is not more than three hours' drive in both directions by public transport or by organized transport of the employer from the place of residence of the employee.[21]

ZDR-1 specifically states that an employee who temporarily performs other "appropriate" or "suitable" work shall have the right to a salary as if he were performing his work, if this is more (monetarily) favourable for him.[22]

When the performance of other appropriate or suitable work would last more than three months in a calendar year, the employer may otherwise terminate the employment contract for business reasons under the first indent of the first paragraph of Article 89 of the ZDR-1 and at the same time offer the employee a new employment contract to continue working under changed conditions or in another work post.[23]

3.3. Education, improvement, and further training

Article 170 of the ZDR-1 stipulates that an employee has the right and duty to continuous education, improvement or further training in accordance with the needs of the work process, with the aim of maintaining or expanding the ability to perform work under an employment contract, maintaining employment and increasing employability.

In the same provision ZDR-1 stipulates the obligation of an employer to provide education, improvement or further training of employees if the needs of the work process require so or if with additional education and further training termination of employment contract for business reasons can be avoided. The employer has the right to refer the employee for education, improvement and further training, and the worker has the right to apply for education, improvement and further training himself In such referral cases the employer bears the costs of education, improvement and further training.

The duration and course of education and the rights of the contracting parties during and after the concluded further education shall be determined by the education contract or by the appropriate collective agreement.

Article 171 of the ZDR stipulates that an employee who is being educated, improved or further trained in accordance with the aforementioned Article 170, as well as an employee who is being educated, improved or further trained in his own interest, has the right to be absent from work for the purpose of preparing or taking exams. If this right is not specified in a collective agreement, employment contract or a special education contract, the employee has the right to be absent from work on the days when he takes the examinations for the first time. This is therefore the minimum content of the right

[21] Art. 33, para. 5, ZDR-1.

[22] Art. 33, para. 7, ZDR-1.

[23] Art. 50 and 91 of the ZDR-1. It should be noted that in practice, many employers terminate a contract for business reasons and offer a new employment contract where the salary is much lower. It is a clear concealment of the reason for the termination of the employment contract, which, according to the case-law cited, is unlawful, (also - Turk, B. J. (27. 8. 2020): Odpoved pogodbe o zaposlitvi v primeru kriznih razmer.)

to be absent from work, but of course a more favourable agreement with the employer is always possible.

An employee who is being educated, improved or further trained in accordance with Article 170 of the ZDR-1 has the right to paid leave of absence from work.

Of course, in matters of education, it is also necessary to check the collective agreement, which is binding for the employer, as it can give workers more rights than ZDR-1.

4. THE "PKP" INTERVENTION LEGISLATION, AIMED AT MAINTAINING EMPLOYMENT

Slovenia during the epidemic of the coronavirus SARS-CoV-2 provided special incentives to employers with a rather extensive and very complex "anti-corona" intervention legislation adopted in special legislative "packages" or "PKPs". From the first proclamation of the epidemic in Slovenia on 12th March 2020 until the end of writing in May 2021, the National Assembly of the Republic of Slovenia has adopted eight PKPs, which are rather unique in the existing Slovenian legislative practice. Certain provisions of individual and subsequent PKPs complement or repeal each other, often even implying a temporary departure from the otherwise applicable rules and sometimes also containing legislative changes of a fixed nature. And, to introduce even more normative confusion, due to the composite nature of the individual PKPs, in some parts their individual provisions are still in force, but some are not and so it might not come as a surprise that even legal practitioners can have a difficult time with the PKPs. It's also important to note, that "PKP" is an informal abbreviation of this type of legislation, as it has never been formally introduced into the official nomenclature. Therefore, the individual PKPs can consist of one or more individual statutes, that all have a common characteristic: usually very unwieldy designations.

The PKPs are as follows:

PKP1:

- Zakon o interventnih ukrepih na javnofinančnem področju (ZIUJP; Official Gazette of the Republic of Slovenia, No. 36/20); Fiscal Intervention Measures Act;
- Zakon o interventnem ukrepu odloga plačila obveznosti kreditojemalcev (ZIUOPOK; Official Gazette of the Republic of Slovenia, No. 36/20, 49/20 – ZIUZEOP and 203/20 – ZIUPOPDVE); Act Determining the Intervention Measure of Deferred Payment of Borrowers' Liabilities;
- Zakon o začasnih ukrepih v zvezi s sodnimi, upravnimi in drugimi javnopravnimi zadevami za obvladovanje širjenja nalezljive bolezni SARS-CoV-2 (COVID-19) (ZZUSUDJZ; Official Gazette of the Republic of Slovenia, No. 36/20 and 61/20); Act on provisional measures for judicial, administrative and other public matters to cope with the spread of infectious disease SARS-CoV-2 (COVID-19);
- Zakon o interventnih ukrepih na področju plač in prispevkov (ZIUPPP; Official Gazette of the Republic of Slovenia, No. 36/20, 49/20 – ZIUZEOP, 61/20 – ZIUZEOP-A and 80/20 – ZIUOOPE); Act Determining the Intervention Measures on Salaries and Contributions;
- Zakon o interventnih ukrepih na področju kmetijstva, gozdarstva in prehrane (ZIUPKGP; Official Gazette of the Republic of Slovenia, No. 36/20); Act on Intervention Measures on Market on Agricultural Products, Food and Timber Assortments;
- Zakon o interventnih ukrepih za zajezitev epidemije COVID-19 in omilitev njenih

posledic za državljane in gospodarstvo (ZIUZEOP; Official Gazette of the Republic of Slovenia, No. 49/20, 61/20, 152/20 – ZZUOOP, 175/20 – ZIUOPDVE and 15/21 ZDUOP); Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy

PKP2:
- Zakon o zagotovitvi dodatne likvidnosti gospodarstvu za omilitev posledic epidemije COVID-19 (ZDLGPE; Official Gazette of the Republic of Slovenia, No. 61/20, 152/20 – ZZUOOP and 175/20 – ZIUOPDVE); Act Providing Additional Liquidity to the Economy to Mitigate the Consequences of the COVID-19 Epidemic

PKP3:
- Zakon o interventnih ukrepih za omilitev in odpravo posledic epidemije COVID-19 (ZIUOOPE; Official Gazette of the Republic of Slovenia, No. 80/20, 152/20 – ZZUOOP, 175/20 – ZIUOPDVE, 203/20 – ZIUPOPDVE and 15/21 – ZDUOP); Act Determining the Intervention Measures to Mitigate and Remedy the Consequences of the COVID-19 Epidemic;
- Interventni zakon za odpravo ovir pri izvedbi pomembnih investicij za zagon gospodarstva po epidemiji COVID-19 (IZOOPIZG; Official Gazette of the Republic of Slovenia, No. 80/20); Intervention Act to Remove Obstacles to the Implementation of Significant Investments to Start the Economy After the COVID-19 Epidemic;
- Zakon o poroštvu Republike Slovenije v Evropskem instrumentu za začasno podporo za ublažitev tveganj za brezposelnost v izrednih razmerah (SURE) po izbruhu COVID-19 (ZPEIPUTB; Official Gazette of the Republic of Slovenia, No. 80/20); Act Regulating the Guarantee of the Republic of Slovenia in European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak

PKP4:
- Zakon o interventnih ukrepih za pripravo na drugi val COVID-19 (ZIUPDV; Official Gazette of the Republic of Slovenia, No. 98/20 and 152/20 – ZZUOOP); Act Determining Intervention Measures to Prepare for the Second Wave of COVID-19

PKP5:
- Zakon o začasnih ukrepih za omilitev in odpravo posledic COVID-19 (ZZUOOP; Official Gazette of the Republic of Slovenia, No. 152/20 and 175/20 – ZIUOPDVE); Act Determining Temporary Measures to Mitigate and Remedy the Consequences of COVID-19

PKP6:
- Zakon o interventnih ukrepih za omilitev posledic drugega vala epidemije COVID-19 (ZIUOPDVE; Official Gazette of the Republic of Slovenia, No. 175/20, 203/20 – ZIUPOPDVE, 15/21 – ZDUOP, 51/21 – ZZVZZ-O and 57/21 – odl. US); Act Determining the Intervention Measures to Mitigate the Consequences of the Second Wave of COVID-19 Epidemic

PKP7:
- Zakon o interventnih ukrepih za pomoč pri omilitvi posledic drugega vala epidemije COVID-19 (ZIUPOPDVE; Official Gazette of the Republic of Slovenia, No. 203/20 and 15/21 – ZDUOP); Act Determining Intervention Measures to Assist in Mitigating the Consequences of the Second Wave of COVID-19 Epidemic

PKP8:
- Zakon o dodatnih ukrepih za omilitev posledic COVID-19 (ZDUOP; Official Gazette of the Republic of Slovenia, No. 15/21); Act on Additional Measures for Mitigation of Consequences COVID-19

Due to the relevance, we are tackling the measures currently still in force from the above mentioned PKPs, which are intended to maintain employment or prevent the termination of employment contracts for business reasons.

4.1. Subsidized temporary lay-off ("waiting for work")[24]

Subsidized temporary lay-off under the PKP legislation is a measure aimed at maintaining employment. Therefore, the various PKPs have provided government subsidies to employers, who would temporarily lay-off a certain part of their workforce. This subsidy covered all or only a part of the salary compensation and/or social contributions and tax duties, pertaining to employees on temporary lay-off. If an employer made use of such government subsidies, he had to follow restrictions on possible labour redundancies otherwise he had to refund the received subsides to the tax authority. These normative restrictions on labour redundancies for business reasons for employees, that have been temporarily laid-off, and employees, that were still working full-time during the epidemic, if their employer made use of subsidies under PKPs, have intensified with the adoption of each new PKP.

ZIUZEOP (PKP2) had basically no restrictions on dismissal of employees for business reasons, namely not for employees who were temporarily lay-off, not on employees who were still working. The ban on labour redundancies for business reasons was first enacted in the ZIUOOPE (PKP3), where it was stipulated that the employer may not dismiss an employee in the period of receiving the salary compensation (sixth paragraph of Article 32 of the ZIUOOPE (PKP3)). ZIUOOPE (PKP3) did not explicitly stipulate that the ban refers only to business reasons labour redundancies, but there was no doubt of this if the principle of purposeful interpretation of this provision was used. Violation of this ban was however not sanctioned as a minor offence.

ZIUPDV (PKP4) then stipulated that during the period of receiving wage compensation for temporarily laid-off employees, the employer may not dismiss the employee for business reasons for whom he claimed reimbursement of wage compensation. He was also not allowed to terminate the employment contract of a large number of employees for business reasons who worked, unless the labour redundancy program was adopted before 13th March 2020 and the employer did not claim a subsidy for these employees under ZIUOOPE (PKP3) or ZIUZEOP (PKP2) (sixth paragraph of Article 10 of the ZIUPDV (PKP4)).

[24] Art. 39 to 53 of the ZDUOP (PKP8).

ZZUOOP (PKP5) contains the same provision, except that it supplemented it for an even larger number of employees, provided that the employer has not yet claimed a subsidy for these employees even under ZIUPDV (PKP4) (sixth paragraph of Article 76 of ZZUOOP (PKP5)).

Violation of the ban on dismissal for business reasons was defined as a minor offence for which a fine was prescribed only when the ZIUPDV (PKP4) was enacted, and later under the ZIUOPDVE (PKP6). However, it is important to note, that if the employer violated the ban and nevertheless terminated the employment contract for business reasons, such a termination is not unlawful just because of this fact. And this is regardless of whether this violation was classified in the PKP as a minor offence or not.

The measure of subsidized temporary lay-off is currently – or at least until the 30th June 2021 – regulated in the ZDUOP (PKP8). This measure can therefore be exercised by any employer in Slovenia, that was registered in the Slovenian business register on 31st December 2020 at the latest, who cannot temporarily provide work due to the epidemic or the consequences of the epidemic, except:

- direct or indirect state or local government budget users, if the share of revenues from public sources in 2020 was higher than 70%,
- employers who perform financial or insurance activity from group K according to the standard classification of activities and had more than 10 employees on 31st December 2020, and
- foreign diplomatic missions and consulates, international organizations, missions of international organizations and institutions of the European Union in Slovenia.

Furthermore, employers are entitled to this measure if, according to their estimates, their revenues in 2021 will fall by more than 20% compared to 2019 or 2020 due to the epidemic or the consequences of the epidemic, as well as an exception all employers who do not meet the 20% drop in revenues in 2021, but only if they have the status of a humanitarian organization under Slovenian legislation.

During the period of subsidized temporary lay-off, employees can register with the ESS and participate in programs for registered jobseekers. They can participate in various forms of non-formal education and training to improve their professional skills and in obtaining new professional qualifications. Participation in such programs is free from the point of view of employees as well as from the point of view of employers.

As to the amount of compensation or subsidies received:

a) 80% of gross I salary compensation and is limited by the amount of the average monthly salary in Slovenia, calculated for the month of October 2020 (EUR 1,821.44),

b) 100% gross I for employers for whom the total amount of public funding received in accordance with point 3.1 of the Commission Communication Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (2020/C 91 I/01) did not exceed EUR 1,800,000 per individual company. The amount of partial reimbursement of paid salary compensation is limited by the amount of the average monthly salary in Slovenia, calculated for the month of October 2020 (EUR 1,821.44),

c) For the time when the employer is fully prevented from carrying out business activities due to the epidemic, Slovenia covers 80% of gross II or 100% of gross II salary compensation.

However, the right to reimbursement of paid salary compensations cannot be exercised by the employer:

- who does not meet the mandatory duties and other monetary non-tax liabilities, which is collected by the Slovenian tax authority if he has unpaid due liabilities on the day of filing the application. An employer shall be deemed not to have fulfilled such obligations if, on the date of submission of the application, he had not submitted all due tax returns for employment income for the period of the last five years up to the date of submission of the application;
- and/or if bankruptcy proceedings have been instituted against him or he is in liquidation proceedings.
- The application must include:
- an estimate of revenue decline,
- proof of posting employees on temporary lay-off for work due to temporary inability to provide them work for business reasons,
- a statement, for the correctness for which he is criminally liable and liable for potential damages, that on the day of submitting the application he has paid all due tax liabilities from mandatory duties and other monetary non-tax liabilities,
- a statement for the correctness for which he is criminally liable and liable for potential damages, that on the day of submitting the application he has fulfilled the obligations arising from the submission of all tax deductions for employment income for the last five years until the date of submission of the application,
- a statement that he paid all salary compensations to the employees on the day of submitting the application, and
- a statement that the state aid under the intervention legislation does not or will not exceed EUR 1.8 million per individual company (or the total aid will not exceed EUR 270,000 per company active in the fisheries and aquaculture sector or EUR 225,000 per company active in the in the field of primary production of agricultural products).

Partial reimbursement of wage compensation, except for employees for whom the payment of wage compensation is not borne by the employer, shall be paid to the employer on a monthly basis, in proportion or in full, on the tenth day of the month following the month of payment of wage compensation.

The employer is entitled to a refund of salary compensation for the actual monthly or weekly obligation, for a holiday and other non-working day determined by statute, if the employee would actually work on that day, but is now on a temporary lay-off.

However, the employer cannot claim salary compensation for temporary lay-off of an employee, if the latter in the said period is subject of notice of termination of an employment contract.

The employer has to return the received funds in full if, when submitting the application, he submitted (seventh paragraph of Article 47 of the ZDUOP (PKP8)):

- an untrue statement that on the day of submitting the application all due liabilities from obligatory duties and other monetary non-tax liabilities have been paid,
- an untrue statement that on the day of submitting the application he has fulfilled the obligations arising from the submission of all withholding tax returns for em-

ployment income for the period of the last five years until the day of submitting the application, or
- an untrue statement that he paid all salary compensations to the employees on the day of submitting the application.

An employer who received funds from the measure of partial reimbursement of salary compensation to workers on temporary waiting for work in the amount of 100% because the total amount of public funds did not exceed EUR 1.8 million per individual company (or total assistance does not exceed EUR 270,000 per company, active in the fisheries and aquaculture sector or EUR 225,000 per enterprise active in the field of primary production of agricultural products) must, if the total amount of received public funds as received subsidies exceeded the upper limit, return the funds, that he received in excess of the maximum amount (second paragraph of Article 44 of the ZDUOP (PKP8)).

A fine of EUR 3,000 to 20,000 shall be imposed on an employer who (inter alia) initiates the procedure of terminating an employment contract for business reasons of employees on temporary lay-off or terminating the employment contract of a large number of employees for business reasons during the period of receiving partial salary compensation, unless the redundancy scheme was adopted before 13th March 2020 and the employer did not exercise the right to reimbursement for these employees under the ZDUOP (PKP8), ZIUZEOP (PKP2), ZIUOOPE (PKP3), ZIUPDV (PKP4) or ZZUOOP (PKP5).

According to the ZDUOP (PKP8) it is considered that the employer during the period of receiving partial reimbursement of compensation:
- may not initiate the procedure of termination of the employment contract for business reasons to employees who have been sent on subsidized temporary waiting lay-off;
- or terminate the employment contracts of a large number of employees for business reasons. A larger number of employees may be dismissed by the employer only if the redundancy scheme was adopted before 13th March 2020 and the employer has not exercised the right to reimbursement of wages for these employees under this ZDUOP or previous PKPs;

must inform the ESS if he recalls the employee back to work.

4.2. Subsidized shortened or part-time work[25]

The measure of subsidized part-time work is again intended to maintain employment. This institute is subject to stricter restrictions on termination for business reasons than the measure of subsidized temporary lay-off.

This measure can only be partaken by employers for their employees who have an employment contract for full-time employment and in such a way that the employer provides the employee with part-time work in the amount of at least half of their usual working obligation (i.e. at least 20 to 35 hours per week).

An employer who provides work to the employee for at least 20 hours per week, and for the remaining full-time work the employee is partially temporary laid-off, may claim a

[25] Art. 11-23 of the ZIUOOPE (PKP3) and articles from 18-20 of the ZDUOP (PKP8). Decision to extend the partial subsidy measure to reduce full - time work**.** *Official Gazette of the Republic of Slovenia*, No. 190/20), determines that the application of this measure (as it is defined in articles from 11-23 of the ZIUOOPE (PKP3)), is extended until June 30, 2021.

partial refund of salary compensation for the time of ordered temporary lay-off (i.e. from 5 to 20 hours per week), which in the ZDUOP is explicitly defined as a "subsidy".

An employer who provides work to an employee for at least part-time (i.e. for at least 20 hours per week) may apply for or claim a partial refund of salary compensation (or "subsidy") for the period of ordered waiting for work (i.e. from 5 to 20 hours per week). The right can be exercised by an employer who cumulatively meets the following conditions:

- is a business entity who was entered in the Slovenian business register before 18th October 2020,
- employs workers on the basis of an employment contract for full-time employment, and
- according to his estimate, at least 10% of his employees cannot be provided at least 90% of work per month,
- the employer is not direct or indirect state or local government budget users if the share of revenues from public sources in 2020 was higher than 50%.

During the period of receiving the subsidy and for one month after its expiration, such an employer is prohibited from initiating the procedure of termination of the employment contract for business reasons for such employees, nor may he terminate the employment contract of a large number of employees for business reasons. Exceptionally, this obligation does not exist if the redundancy scheme was adopted before 13th March 2020 and the employer did not claim a subsidy for these workers either under the ZIUOOPE (PKP3) or ZIUZEOP (PKP2).

Such an employer shall also be prohibited from ordering overtime or ordering temporary redistribution of working time if such work can be carried out with employees, who were ordered to work on subsidized part-time.

Employers, who do not adhere to the abovementioned bans can expect a fine in the amount from EUR 450 to 50,000.

The "subsidy" is reduced proportionally for the time of the employee's absence from work in the cases, that are specified by the ZDR-1. These are mainly absences due to the use of annual leave, sick leave, holidays, and other non-working days.

The "subsidy" is paid to the employer monthly, but no later than 30 days after the signing of the subsidy agreement between the employer and the ESS.

ZIUOOPE (PKP3) also provided for certain rights and obligations for an employee who has been ordered by the employer to work part-time. Of utmost importance is that such an employee retains all rights and obligations arising from the employment relationship as if he were working full time, unless explicitly provided otherwise in the provisions of the ZIUOOPE (PKP3).

The employee therefore has:

- the right to be paid for work for the period, in which he is actually performing his designated work (100% of salary);
- the right to compensation of salary for the period up to full-time within the ordered part-time work, in the amount determined by the ZDR-1 for cases of temporary inability to provide work to employees for business reasons (80% of the base salary; regardless of to the amount of the subsidy that the employer may or may not receive);
- the right to a break in proportion to the time spent at work;

- the obligation to perform full-time work at the request of the employer;
- the right to a monthly salary compensation when he is absent from work in cases determined by the ZDR-1 (i.e. due to annual leave, sick leave, holidays and other non-working days) in the amount determined by the ZDR-1 for such cases;
- the right to register with the ESS in the register of jobseekers during the ordered part-time work and to be included in the measures provided to registered jobseekers.
- As is the case with other measures in the PKPs, that are intended to maintain employment, some of the individual PKPs have provided fines or compulsory refunds for employers, who despite the ban on termination of employment contracts for such workers due to business reasons have laid-off employees, for whom they received subsidies. However, it is again important to note, that if the employer nevertheless violated such a ban, the termination in itself is not deemed unlawful just because of this fact.

4.3. Reimbursement of a part of the minimal wage in the form of a temporary monthly subsidy[26]

Partial subsidization of the minimum wage for wages, paid in the period from January to June 2021, is in the ZDUOP (PKP8) provided in such a way that the employer for each employee, whose wage for full-time work does not exceed the amount of the statutory minimum wage, is entitled to a refund in the form of a monthly subsidy of EUR 50.

However, such an employer during the period of receiving the minimum wage subsidy and for three months thereafter, may not initiate the procedure of termination of the employment contract for business reasons for the employees for whom he was entitled to receive the subsidy or terminate the employment contract of a large number of employees for business reasons, unless the redundancy scheme was adopted before the entry into force of the ZDUOP (PKP8), i.e. before 5th February 2021 (ban on redundancies).

The employer may terminate the employment contract of employees for business reasons for whom he was not entitled to receive such a subsidy, as long as this does not represent termination for a larger number of employees in accordance with Article 98 of the ZDR-1.

If the employee has a part-time employment contract or performs part-time work, the employer is entitled to a proportionate share of the subsidy.

Article 30 of the ZDUOP (PKP8) defines a minor offence for employers who violate the ban on redundancies due to business reasons for employees, for whom they received minimum wage subsidies, in which case they can expect a fine of EUR 450 to EUR 20,000.

5. INSTEAD OF CONSLUSION – AN ASSESMENT OF THE LEGALITY OF THE TERMINATION OF THE EMPLOYMENT CONTRACT FOR BUSINESS REASONS DUE TO THE PANDEMIC

There is still no case law in Slovenia on the termination of an employment contract for business reasons due to the consequences of the SARS-CoV-2 virus epidemic, which is also understandable. Nevertheless, two judgments of the Supreme Court should be highlighted here, which could be applied to the current economic situation caused by the outbreak of the virus.

In its judgment and decision VIII Ips 233/2016 of 10th November 2016, the Supreme Court took the stance that any (negative seasonal) deviation in the employer's operations

[26] Art. 29 and 30 of the ZDUOP (PKP8).

is not a justifiable reason for dismissal, especially not if it is based on a projection of future business events:

"The employer may justify the termination of the need for work of an employee in relation to specific obligations from the employment contract by predicting future business or economic trends, but such a forecast must be based on a reasonably justified method.

However, the permanent (un)necessity of certain employment cannot be justified by the employer only by considering a short and inappropriate time section concerning the volume of sales, which can change over a longer period of time. Therefore, short-term seasonal fluctuations in themselves do not justify the conclusion, that negative business trends will prevail in the future in other seasonal periods as well."

A similar position is also evident from the decision of the Supreme Court VIII Ips 68/2017 of 5th September 2017, which also referred to the above decision:

"The [Supreme Court] has already explained that the employer can justify the termination of the need for work of an employee also by predicting future business or economic trends, but such a forecast must be based on a reasonably justified method.

Therefore, the plaintiff [as an employee] is justified in stating that this is an assessment of the defendant [as an employer] about possible future events and future reorganization of [his] business operations, which, at least at the time of termination (...), is not clear whether it will even occur at all in any shorter time period, that follows the termination of the plaintiff's employment contract. This means, that reducing the number of individual contractors in the workplace, based just on future planning of the potentially unnecessary tasks on a particular work post, which in turn is based on the assessment of data on reduced future sales, cannot refer to the distant future, and in particular should not be entirely hypothetical in its nature."

It is clear from decisions, presented above, that mere short-term uncertainness of the (business) future of an enterprise cannot in itself be the prevailing criterion in justifying the termination of the employment contract due to business reasons. However, if such a period of uncertainness is substantially longer, for example, if the economic downturn of an enterprise was in place even before the outbreak of the SARS-CoV-2 virus, the employer is on the safer side, when the validity of the grounds for labour termination due to business reasons is concerned.[27] The key, in our view, will be whether or not the business model of each employer was essentially economically sound – or in other words "healthy" – even before the outbreak of the current epidemic. In short, if the companies in question were previously without a serious economic "illness", their resorting to available state "medicines" in form of various temporary subsidies during the epidemic will find them all the more difficult to lawfully resort to labour redundancies, relying business reasons.[28]

LITERATURE

Monographs, articles

Bečan I., Belopavlovič N., Korpič Horvat E., Kresal B., Kresal Šoltes K., Mežnar Š. *et al*. (2019). *Zakon o delovnih razmerjih (ZDR-1) s komentarjem, 2., posodobljena in dopolnjena izdaja*. Ljubljana: Lexpera in GV založba.

[27] Weber, N. (2020). (Ne)zakonitost odpovedi iz poslovnih razlogov v času koronavirusa, *Dignitas*, pp. 87-88.

[28] *Ibid.*

Cvetko, A., Kalčič M., Klampfer M., Korpič-Horvat E., Novak M., Senčur-Peček D. (2004). *Pogodba o zaposlitvi in podjetniška kolektivna pogodba*. Ljubljana: GV Založba.

Krašovec, D**.** (2013). *Novi veliki komentar Zakona o delovnih razmerjih in reforme trga dela*. Ljubljana: Založba Reforma d.o.o.

Štelcer N. (2014). *Veliki komentar ZDR-1*. Maribor: Poslovna založba MB, založništvo d.o.o.

Weber, N. (2020). *Nezakonitost odpovedi iz poslovnih razlogov v času koronavirusa*. Dignitas, 87-88.

Legal sources

Employment Relationships Act (ZDR-1). *Official Gazette of the Republic of Slovenia*, No. 21/13, 78/13 - amended , 47/15 - ZZSDT, 33/16 - PZ-F, 52/16, 15/17 - US decision, 22/19 - ZPosS, 81/19 and 203/20 – ZIUPOPDVE. Available athttp://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5944 (10.5.2021).

Constitution of the Republic of Slovenia (URS). *Official Gazette of the Republic of Slovenia*, No. 33/91-I , 42/97 - UZS68, 66/00 - UZ80, 24/03 - UZ3a, 47, 68, 69/04 - UZ14, 69/04 - UZ43, 69/04 - UZ50, 68/06 - UZ121,140,143, 47/13 - UZ148, 47/13 - UZ90,97,99 and 75/16 – UZ70a. Available at http://pisrs.si/Pis.web/pregledPredpisa?id=USTA1 (10.5.2021).

Act on Intervention Measures to Assist in Mitigating the Consequences of the Second Wave of the COVID-19 Epidemic (ZIUPOPDVE). *Official Gazette of the Republic of Slovenia*, Nos. 203/20 and 15/21 – ZDUOP. Available at http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO8304 (10.5.2021).

Civil Servants Act (PPA). *Official Gazette of the Republic of Slovenia*, No. 56/02, 110/02 - ZDT-B, 2/04 - ZDSS-1, 50/04 - ZPol-C, 23/05, 62/05 - odl. US, 75/05 - odl. US, 113/05, 21/06 - odl. US, 68/06 - ZSPJS-F, 131/06 - odl. US, 33/07, 65/08, 69/08 - ZTFI-A, 69/08 - ZZavar-E, 40/12 - ZUJF, 63/13 - ZS-K, 158/20 - ZIntPK-C, 203/20 - ZIUPOPDVE, 28/21 - odl. US. Available at http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3177 (10.5.2021).

Additional Measures for Mitigation of Consequences Act COVID-19 (ZDUOP). *Official Gazette of the Republic of Slovenia*, No. 15/21. Available at http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO8321 (10.5.2021).

Act on Intervention Measures to Contain the COVID-19 Epidemic and Mitigate Its Consequences for Citizens and the Economy (ZIUZEOP). *Official Gazette of the Republic of Slovenia*, Nos. 49/20, 61/20, 152/20 - ZZUOOP, 175/20 - ZIUOPDVE and 15/21 – ZDUOP. Available at http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO8190 (12.5.2021).

COVID-19 Mitigation and Elimination Intervention Measures Act (ZIUOOPE). *Official Gazette of the Republic of Slovenia*, No. 80/20 , 152/20 - ZZUOOP, 175/20 - ZIUOPDVE, 203/20 – ZIUPOPDVE and 15/21 – ZDUOP. Available at http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO8206 (12.5.2021).

Intervention Measures Act for Preparation for the Second Wave COVID-19 (ZIUPDV). *Official Gazette of the Republic of Slovenia*, No. 98/20 and 152/20 – ZZUOOP. Available at http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO8231 (10.5.2021).

Temporary Measures for Mitigation and Elimination of Consequences COVID-19 Act (ZZUOOP). *Official Gazette of the Republic of Slovenia*, No. 152/20 and 175/20 – ZIUOPDVE. Available at http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO8254 (10.5.2021).

COVID-19 Second Wave Mitigation Measures Act (ZIUOPDVE). *Official Gazette of the Republic of Slovenia*, No. 175/20 , 203/20 - ZIUPOPDVE, 15/21 - ZDUOP, 51/21 - ZZVZZ-O and 57/21 odl. US. Available at http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO8272 (10.5.2021).

Labor Market Regulation Act (ZUTD). *Official Gazette of the Republic of Slovenia*, No. 80/10 , 40/12 - ZUJF, 21/13 , 63/13 , 100/13 , 32/14 - ZPDZC-1, 47/15 - ZZSDT, 55 / 17 , 75/19 , 11/20 – US decision, 189/20 - ZFRO and 54/21. Available at http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5840 (10.5.2021).

Decision to extend the partial subsidy measure to reduce full - time work**.** *Official Gazette of the Republic of Slovenia*, No. 190/20. Available at http://pisrs.si/Pis.web/pregledPredpisa?id=SKLE12250 (10.5.2021).

Case law

Judgement of the Higher Labor and Social Court, Pdp 898/2012, 14. November 2012.

Judgement of the Supreme Court of the Republic of Slovenia, VIII Ips 239/2016, 21. February 2017.

Judgement of the Supreme Court of the Republic of Slovenia, VIII Ips 245/2017, 16. January 2018.

Judgement of the Higher Labor and Social Court, Pdp 8/2020, 5. March 2020.

Judgement of the Higher Labor and Social Court, Pdp 520/2020. 22. October 2020.

Judgement of the Higher Labor and Social Court, Pdp 245/2017, 6. April 2017.

Decision of the Supreme Court of the Republic of Slovenia, VIII Ips 82/2017, 19. December 2017.

Judgement of the Supreme Court of the Republic of Slovenia, VIII Ips 205/2014, 15. December 2014.

Decision of the Supreme Court of the Republic of Slovenia, VIII Ips 26/2020, 24. September 2020.

Judgement of the Higher Labor and Social Court, Pdp 379/2017, 5. October 2017.

Judgement of the Supreme Court of the Republic of Slovenia, VIII Ips 224/2012, 18. December 2012.

Judgement of the Supreme Court of the Republic of Slovenia, VIII Ips 82/2007, 26. June 2007.

Judgement of the Supreme Court of the Republic of Slovenia, VIII Ips 411/2008, 23. February 2010.

Judgement of the Supreme Court of the Republic of Slovenia, VIII Ips 69/2010, 19. December 2011.

Judgement of the Supreme Court of the Republic of Slovenia, VIII Ips 275/2010, 5. September 2011.

Decision of the Supreme Court of the Republic of Slovenia, VIII Ips 115/2009, 15. February 2011.

Decision of the Supreme Court of the Republic of Slovenia, VIII Ips 207/2010, 20. December 2011.

Commission v Hungary, 2012. Judgment of the Court (First Chamber) of 6. November 2015 (Case C-286/12, ECLI:EU:C:2012:687). Available at https://curia.europa.eu/juris/liste.jsf?oqp=&for=&mat=or&lgrec=sl&jge=&td=%3BALL&jur=C%2CT%2CF&num=C-286%252F12&page=1&dates=&pcs=Oor&lg=&pro=&nat=or&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&language=en&avg=&cid=8528699 (13.5.2021).

Decision of the Constitutional Court of the Republic of Slovenia, U-I-16/21-11, 18. February 2021.

Judgement and decision of the Supreme Court of the Republic of Slovenia, VIII Ips 233/2016, 10. November 2016.

Decision of the Supreme Court of the Republic of Slovenia, VIII Ips 68/2017, 5. September 2017.

COVID 19 – prestanak ugovora o radu iz poslovnih razloga

Rezime: Članak je posvećen regulisanju prestanka ugovora o radu iz poslovnih razloga u slovenačkom pravom sistemu. Prema ustaljenoj sudskoj praksi, svaki otkaz ugovora o radu je *ultima ratio* poslodavca. Pored alternativa za prekomerni višak zaposlenih iz ZDR-a i pregleda mera iz PKP paketa, opcije koje država nudi poslodavcima da spreče višak zapslenih, bar trenutno ne pružaju dovoljnu osnovu za zakonitost viška zaposlenih zbog ekonomske krize usled pandemije

Ključne reči: otkaz ugovora o radu, virus SARS-CoV-2 (COVID-19), PKP paketi.