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THE CONSEQUENCES OF PSYCHOSOCIAL RISKS IN THE WORKPLACE IN LEGAL CONTEXT

Monika Seilerová¹

¹ Faculty of Law, Pavol Jozef Šafárik University in Košice, Košice, Slovakia

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Abstract

Although the issue of psychosocial risks in the workplace is not entirely new, dynamic economic and technological developments require adequate responses to changing realities of work and the working environment, both from legislative authorities and from internal policies. The Slovak legislation includes the evaluation and adoption of measures against the psychological workload, including the control mechanism. The author, however, does not consider the current legal status to be optimal. The paper deals with the analysis of the legal regulation of mental workload and points to its shortcomings. It also deals with the responsible legal relationships that arise in the context of the presence of psychosocial risks in the workplace, especially in the context of their impact on employee health, their subsequent legal entitlements and the duration of the employment relationship.

Key Words

psychosocial risks, control mechanism, harm to mental health, employer's responsibility

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Introduction

The International Labor Organisation has already introduced a definition of the psychosocial factors of work in 1986. It defines them as *interactions between the working environment, the content of work, organisational conditions and capacities, needs, culture, personal out-of-work attitudes that can affect health, work performance through perception and experience and job satisfaction*. (ILO, 1986) The European Agency for Safety and Health at Work (hereinafter referred to as 'The European Health and Safety Agency') also points to their seriousness for employees. It identifies them as one of the potential risks to workers' health and safety. In addition, several empirical studies confirm the link between the factors examined and the health of an employee (e.g. Harvey et.al., 2017).

The presence of psychosocial factors in the workplace is not a modern phenomenon. Restoration of their perception representing important elements of the working environment is related to the changing form of the economic and labor market. The intensification of work, the flexibility of forms and ways of work performance, together with the expanding technological revolution, lead to their increase, to the possible variation of the reasons behind them and the need to reassess their origin as a result of information and communication technologies (hereinafter referred to as 'ICT') (Stacey et. al., 2018). The Eurofound and International Labor Office (2017) and the World Health Organisation (2014) merely testify that the implications of using the ICT can have consequences for employees' physical and mental health.

In the context of digitisation, The European Health and Safety Agency draws attention to new challenges that legal regulation of states will have to deal with. Among them, there are also psychosocial and organisational factors triggered by increased work pace, changes in the way, place and time of work, including its management and control. In particular, work-related stress is increasing as a result of the constant monitoring of everywhere portable ICT technologies, which allow for continued availability and are blurring the gap between work and private life.

It can be assumed that the effects of work-related stress and other related factors will be reflected on the health of employees in a rising tendency even more so than until now. For this reason, it is necessary to consider the question of whether the legal status of *de lege lata* in the Slovak Republic (hereinafter referred to as 'SR') is sufficient, to the addressees of the norms comprehensible, the sanction mechanism sufficiently effective and the claims of employees that arise in the operation of these factors are enforceable.

Theoretical background

Legal regulation of psychosocial risks - is there a need to change legislation?

A legal definition of the concept of psychosocial risks in the Slovak legal order is missing. The explicit reference to them is found in the regulation § 21 of Act No. 124/2006 Coll. on The Safety and Health Protection at Work, as amended (hereinafter referred to as the 'The Health and Safety Act'), within the framework of determining the tasks of preventive and protective services, the activity of which the employer is obliged to provide in the scope required by law. In the same law, the legislator already uses another notion in another instance - the notion of mental workload. According to regulation § 6 Article 1 (a) e), the employer is obliged to ensure that o.i. factors affecting mental workload and social factors have not endangered workers' safety and health.

Act No. 355/2007 Coll. on The Protection, Promotion and Development of Public Health, as amended (hereinafter referred to as 'The Public Health Protection Act'), complements the range of terms by referring to psychological factors as a part of working conditions that affect the health and work performance of a person in the work process (regulation § 2 Article 1 e)). At the same time, this law also defines the employer's legal obligation to ensure an assessment of mental workload and to take measures to exclude or reduce it (regulation § 38 Article 3 of The Public Health Protection Act). The Decree of the Ministry of Health No. 542/2007 on the details of health protection against physical stress at work, psychological workload and sensory workload (hereinafter referred to as 'the Decree') is also different by its terminology. It defines the central concept of mental workload (regulation § 2 Article 1 a)). The mental

workload is a factor that is a summation of all the evaluable effects of work, working conditions and the working environment, affecting the cognitive, sensory and emotional processes of a person that affect a person and cause conditions of increased mental tension and stress on psychophysiological functions. Furthermore, the terminology is "enriched" by the definition of psychosocial burden (regulation § 2 Article 1 f)), which is separate from the definition of mental workload. However, in other provisions of the Decree, we do not find again any link of psychosocial burden with the mental workload. Similarly, the measures set out in the Decree apply explicitly to reducing the increased mental workload, not the psychosocial burden.

The common terminological denominator of the legislation constituting the national legal framework for health protection at work is, therefore, the notion of mental workload. Among the characteristics of work and work environment used in its assessment are those that are included in psychosocial factors in professional studies (e.g. social interactions, forced work pace, the monotony of work). But is the mental workload the same set of variables as the psychosocial burden? The 2013 Annual Report on the Activities of the Regional Public Health Authorities of the Slovak Republic shows that the mental workload does not include social or psychosocial characteristics, i.e. it does not replace the assessment of psychosocial factors at work (The Public Health Authority, 2013). However, from a legal and psychological point of view, we base our standpoint on the need to interpret the term more broadly, inclusive of psychosocial characteristics, as well as the work-related stress. Finally, according to the European Commission Report on the Implementation of the Framework Agreement on work-related stress (SEC, 2011, 241 final), reference is made to the above-mentioned legal standards for the Slovak Republic. We assume then that at the European Union level (hereinafter referred to as 'the EU'), the notion of mental workload is naturally accepted as a sufficiently general basis for the inclusion of psychosocial factors. It follows that national legislation meets the requirements of the social partners at the EU level to incorporate work-related stress as well as other psychosocial risks into the national regulation.

Regardless of legal or psychological considerations, it is important for employee health care that psychological stress assessment criteria respond flexibly to changes in the labour market and the factors that bring about these changes. Recent studies on psychosocial factors include, for example, low intra-organisational communication, job insecurity, lack of staffing impact on work pace/decision-making, or discrimination in the workplace (Irastorza & Milczarek & Cockburn & European Agency for Safety and Health at Work, 2016). The question that arises is whether the 2007 Decree corresponds to the changing circumstances of the current world. The answer is, in our opinion, negative.

The second point of these considerations is to answer the question if the clarification of the legislation based on the explicit definition of the notion of psychosocial risks and work-related stress is desirable, or would be merely yet another legislative instrument without adequate effects for the addressees of the ruling. In addition to what has already been mentioned in the concept of mental workload, we add that it is argued that psychosocial risks and work-related stress are a natural part of the occupational health and safety system (hereinafter referred to as 'the OSH'), as well as other factors of the working environment (Seilerová, 2018). Preventing, managing and evaluating this risk group is a standard statutory obligation for the employer, regardless of whether we have the obligation to manage or reduce, for example, work-related stress in the Labour Code or in specific laws. On the other hand, employers' practice often does not suggest that the legal framework in this area is properly implemented. For this reason, the statutory emphasis enshrining a specific range of employer responsibilities to develop in-house rules for assessing psychosocial factors,

including work-related stress, would increase the required level of health protection. We see this as an analogy to the operating order, which the employer must have ready, for example, in the presence of increased physical workload in the workplace. However, we see the most important need for legislative change in achieving legal clarity through the terminological unification of the terms used or their clear distinction (mental workload and psychosocial risks in the OSH Act).

Let us briefly discuss how to assess psychosocial risks. According to regulation § 21 Section 1 of The OSH Act, the scope of preventive and protective services should include the implementation of risk prevention tasks, with a particular emphasis of their focus on the prevention of psychosocial risks. The preventive protective services are provided by the employer in addition to the occupational health service, by the technical safety service. The competencies in assessing health risks and supervising the working conditions of employees in the first and second categories of selected duties were withdrawn from the scope of the technical safety service with effect from December 1, 2017. They are currently entrusted exclusively to the occupational health service. The status and content of activities covered by the health services for individual categories of works divided by the severity of the health risk are regulated by The Public Health Protection Act. From regulation § 30 Section 1 b) of this Act, it follows that the employer is obliged to ensure an assessment of the health risk from exposure to the factors of the work and the working environment and, on the basis of this assessment, to provide a written risk assessment with the categorisation of works. The employer's obligation to ensure the assessment of psychosocial risks is legally guaranteed for all categories of works. The question of how to ensure the assessment of psychosocial risks by occupational health services in the first and second categories is unclear. According to § 30aa Section 1 a) and Section 2 a) of The Public Health Protection Act, the role of occupational health service for the first and second category of selected duties may also be carried out by a physician specialising in general medicine.

According to § 5 Section 1 of the Decree evaluating of the mental workload, the employer arranges through the occupational health service physician with specialisation in occupational medicine or clinical occupational medicine and clinical toxicology, or preventive occupational medicine and toxicology, or health services at work (letter a)) or through another medical worker in the team of the occupational health service, which is a psychologist with a practice of at least three years in a legally specified field.

According to the Decree, the assessment of mental workload cannot, therefore, be carried out by a physician specialising in general medicine. How does the employer ensure the assessment of the level of psychosocial risks, if the occupational health service is provided 'only' by a general practitioner? In our opinion, in order to fulfil the obligation to carry out a psychological workload assessment (which should also include psychosocial risks), it is the employer's duty to arrange the assessment by a person within the meaning of § 5 Section 1 of the Decree, i.e., for example, a psychologist. Even though the employer will ensure the activities of the occupational health service by a medical practitioner with specialisation in general medicine, it is objectively impossible for this health supervision to achieve a comprehensive assessment of all risks of the working environment. The general practitioner may not have all the details of working conditions and professional qualifications to evaluate them. Therefore, in our opinion, the employer should ensure that the mental workload is assessed in a different manner, in the manner required. Otherwise, these kind of factors cannot be evaluated. The legal possibility of assessing potential risks by general practitioners is inconsistent (e.g.) with the wording of the Decree. It does not follow from the provisions of the Act that the employer cannot ensure the assessment of risks in two or more ways, for example by a doctor with specialisation in general medicine and specialisation in clinical

occupational medicine and clinical toxicology. In our opinion, regulation § 21 of The Health and Safety Act is necessary if the employer makes use of the possibility to provide health care services by a general practitioner only.

In particular, the idea behind pointing out of psychosocial risks in legislation is to address the consequences of their presence in the workplace. The World Health Organisation in The Global Work Plan on the Employee Health 2008 - 2017, has highlighted the achievement of the highest attainable level of physical and mental health for employees, including favourable working conditions (point 4). One of the objectives was to improve the assessment and management of health risks, which was to be achieved by defining basic interventions to prevent and control the mechanical, physical, chemical and psychosocial risks in the working environment (point 11). Equally, in its Mental Health Action Plan 2013 - 2020, the determinants of mental health and mental disorders include not only individual attributes (the ability to manage their thoughts, emotions), but also emphasise social, cultural or economic factors such as social protection or working conditions (The World Health Organisation, 2013).

Many authors, however, disagree that the labour factors may be the exclusive cause of employee mental illness. Finding a causal relationship between psychosocial factors and mental health disorder is particularly complicated by the fact that individual qualities and other facts specific to a particular individual do not have to be related to work performance. The ambiguity of the cause and effect is consequently reflected in the ambiguity of the answer assuming the employer's responsibility for the injury suffered by the employee. We are afraid that the uncertainty in assessing the chain of causes that may cause mental disorder will always be present. In addition to retaining this fact for professional or expert judgment, consideration may also be given to setting auxiliary criteria (rebuttable legal assumptions), under which we accept that the factors of the working environment have been so intense that when the injury was incurred they have outweighed other non-occupational factors, unless proven otherwise. In addition to identifying the consequences of a particular mental health disorder, it is also interesting to look at the responsibilities that arise when not taking action in relation to psychosocial risks, including work-related stress.

Material and methods

The purpose of the scientific paper is a critical analysis of the Slovak legislation in the context of the regulation of psychosocial risks in the workplace. Furthermore, the effectiveness of the sanction mechanism in the event of a breach of statutory provisions and the employer's responsibility for the consequences of not taking measures to prevent and reduce the increased mental workload also depend on this. Another objective is to evaluate the legal consequences of an employee's termination of employment and to find a causal relationship between the existence of a mental workload and the immediate and serious threat to the employee's life and health.

The basis for processing the issue is the material obtained by studying domestic and foreign literature mostly of a journalistic nature. In addition, the case law of the Slovak and Czech courts was used to present the current decision-making practice in the legal consequences of the emergence of mental disorder in employees and the employer's liability. Also available were publicly available statistical surveys carried out by The European Agency for Safety and Health at Work, The World Health Organisation, The Public Health Authority of the Slovak Republic and The Ministry of Health of the Slovak Republic. The apparatus of knowledge also builds on the results of the research activities carried out so far in the area of employee mental health (research project APVV - 16 - 0002 The Mental Health in the Workplace and the Assessment of Employee Health Fitness). Scientific methods of analyses of legal regulation, including induction, deduction and descriptive methods, were used in the compilation of the paper.

Results and discussion

The Control of Psychosocial Risks in the Workplace

If we have established that measures for mental health protection are a part of the OSH policy, the effectiveness of the reinforcement of legal ruling is achieved through the sanctions resultant from non-compliance. Competencies in the area of work protection are entrusted to public administration bodies in addition to the employer, employees safety representative or a trade union organisation. According to Act no. 125/2006 Coll. on The Labor Inspection and an amendment and supplement to Act no. 82/2005 Coll. on The Illegal Work and The Illegal Employment and on amendments and supplements to certain acts (hereinafter referred to as the 'The Labour Inspection Act'), the Labour Inspectorate supervises the observance of legal and other regulations for the occupational health and safety, including regulations governing the working environment (regulation § 2 Section 1 (a) point 3)). For their violation, The Labour Inspection is entitled to impose a fine of up to 100,000 EUR (§19 Section 1 (a)). The control activity of the inspection focuses, among other things, on the OSH management system, keeping the necessary documentation or assessing the risks (e.g. The Report on the Status of Labour Protection for 2017). However, we believe that, in practice, the importance of factors associated with the mental workload is given less attention than to the others. In fact, we were unable to find out from the available reports whether the subject of the control activities is also the exclusive category of psychosocial conditions and anti-stress policy at the workplace. We reiterate that the assessment of mental workload is the employer's legal obligation, not just the added value of the OSH rules, which the employer may or may not choose. The fact that the assessment of psychosocial risks is not carried out is formal and does not correspond to reality, is justified by the 'absence of a methodology for assessing psychosocial factors (lack of evaluation tools for the employer).' (Urdziková & Kordošová, 2015) For this reason, there is a current call for compilation of the national methodological processes for The Employment Inspectorate that would allow for the control and for the amendments of identified deficiencies to take place. Foreign research confirms the importance of labour inspection for the prevention of psychosocial risks (Weissbrodt et. al., 2018).

The absence of control activities in the area of labour inspection is partly offset by the state health surveillance, which is carried out by the regional public health authorities. Under The Public Health Protection Act, for example, failing to assess health risk from exposure to factors of work and the working environment and failing to produce a risk assessment is an offence (regulation § 57 Section 22), for which the competent authority imposes a fine from 150 EUR to 20,000 EUR. Even more costly for the employer may be a violation of one of the employer's obligations in the area of health protection against physical workload or mental workload (regulation § 57 Section 29), for which the state health supervision authority is entitled to impose a fine from 2000 EUR to 150,000 EUR. According to data from The Annual Activity Report of The Regional Public Health Authorities of 2017, it is clear that every year the number of hazardous work resultant from increased mental workload is ascertained (p. 169), whereby an overview of its content contains also an overview of their activities, which are so-called other investigations, including investigations into the mental workload (p. 192). We do not find results of the inspection activity specifically focused on the internal policies of employers against the increased mental workload. This implies the need to focus on consistent professional oversight on the fulfilment of employer's obligations in the field of psychosocial risk assessment in order to ensure regulatory compliance.

The Consequences of Psychosocial Risks on Employee Mental Health and Their Compensation

Pointing to the importance of legal obligations relating to the psychological factors of the working environment is reflected in the employer's liability for damages to the employee's health. In the case of psychosocial factors, mental health disorders are increasingly mentioned in the professional community. The International Classification of Diseases, although more of a tool for clinical use, as a basis for justifying a change to the current legislation, includes mental disorders and behavioural disorders (F00 - F99), among which there is also the so-called acute stress response as a response to exceptional psychological stress (F43). However, in a brief description of these diseases, there is no indication of their closer connection to work and the working environment. Another group of classification of diseases labelled Z00-Z99 is 'factors affecting health and contact with health services'. On the contrary, we find a connection between them and the working life of the individual in several places. These include, for example, employment and unemployment issues, as well as a stressful working regime (Z - 56.3), stress (Z73.3), burnout (Z73.0) or lack of rest and leisure.

The Commission Recommendation on The European List of Occupational Diseases of 2003 emphasises the support for research into occupational diseases, including psychosocial disorders, but The Commission does not mention in its own list mental disorders acquired as a result of work. Conversely, the list of occupational diseases developed by The International Labour Organisation (revised in 2010) refers in point 2.4 to 'the post-traumatic stress disorder and other mental and behavioural disorders where the direct linking is scientifically determined or determined by methods appropriate to national conditions and practices, between exposure to the risk factor resulting from work activities and mental disorders and behavioural disorders of the employee.' The Slovak List of Occupational Diseases listed as the Annex no. 1 of Act no. 461/2003 Coll. on The Social Insurance, like The Commission Recommendation on The European Occupational Disease List, does not contain any mental disorder (Demková, 2018; Dolobáč & Seilerová, 2018). Therefore, The Slovak Occupational Disease Catalogue should be considered incomplete. While work-related mental disorders are part of the international classification of diseases recognised in Slovakia (burn-out syndrome)

but are not recognised as occupational diseases with accidental insurance claim eligibility, the range of employee legal rights for mental health compensation is narrowing.

According to a 2013 study carried out in ten European countries, the recognition of mental disorder as an occupational injury was recognised in most of these countries already a few years ago. The condition, however, was that the cause of the mental disorder was an unexpected traumatic event of short duration (e.g. robbery in the workplace). In these circumstances, in particular, post-traumatic stress disorder was recognised. However, these were not cases of work-related stress or other psychosocial risks in the workplace. In the Slovak and Czech legal environment, we do not find many practical cases and court decisions related to the compensation of mental disorder acquired as a result of factors of the working environment. Findings if we can consider a mental disorder of an employee as an occupational injury is based on the fulfilment of its legal identification indicators. According to regulation § 195 Section 2 of The Labour Code, a work-related injury is a damage to the health of an employee in the performance of work tasks or in direct connection with these, regardless to his will, by short-term, sudden and violent external influences. The fulfilment of the condition of the short-term, sudden and violent state caused by external influences makes it difficult to recognise a mental disorder as a work injury. The case-law defines a work-related injury consistently as *'such damage to the health of an employee, the cause of which was the nature of the accident, that is to say, damage to health was caused by external effects (physical or psychological overload - trauma) which were short-lived in nature; sudden and violent, it must be a substantial, important and significant cause.'* (The Resolution of the Supreme Court of the Czech Republic, File No. 21 Cdo 1235/2011 dated October 5, 2011) The long-term effect of certain factors in the working environment leads rather to the emergence of disease from jobs.

In particular, in the case of bullying by the employer, which may manifest itself differently, for example in the improper organisation of working time (division of working time with a four-hour break between working hours) or the imposition of work tasks that do not correspond to work under the employment contract, The Supreme Court of The Czech Republic judged that it would not be considered as work-related injury because none of the employer's actions *'has the character of an accident that would be short-lived, sudden and violent in nature, and the action that takes place over a period of months is neither an accident nor as a whole.'* The judgment of The Supreme Court of the Czech Republic, File No. 21 Cdo 4394/2014 dated March 24, 2016)

Similarly, another case was assessed in which the employee was diagnosed with a mental disorder of adaptation (F 43.2 serious mental disorder resulting from terrible experiences or other adverse psychological factors and distress situations) because of the gross, arrogant or vulgar behaviour of the company executive. This was excluded from classification as an occupational accident. The reason was the process of damage to health, which did not happen suddenly but by *'the long-term negative effect'*, due to the long-term stress and permanent tension (the judgment of The Supreme Court of the Czech Republic, File No. 21 Cdo 2738/2017 dated May 15, 2018). In both cases, The Supreme Court of the Czech Republic proceeded by subsuming the employer's conduct under the general liability of the employer for damages under the provisions of regulation § 192 Section 1 of The Labour Code or Section 2 of The Labour Code. In the first case, The Supreme Court of the Czech Republic applied the provision on violation of legal obligations by the employer to the facts of the employer bordering with bullying. In the latter case, the long-term negative behaviour of the employer was subsumed under the intentional action of the employer against good morals.

In order to qualify for compensation for damages caused to mental health, it is therefore necessary to investigate and prove the employer's liability for damages caused to the employee by breach of the legal obligations in the performance of the employer's work duties by employees acting on behalf of the employer (paragraph 2) or the employer's liability for damages incurred by the employee in performing of work-related tasks or in direct relation to these, by violating legal obligations or deliberately acting against good morals (paragraph 1). The cases presented suggest that claiming compensation for damages to mental health due to working environment factors is not excluded. However, demonstrating the facts that will fulfil all the necessary assumptions of general responsibility for the employer's damage to the employee is not easy.

A risk to the mental health of an employee can lead to extreme consequences such as suicide (Milner et. al., 2017) Some countries recognise suicide originating from work as a reason to provide coverage from accident insurance. For example, in France, it is believed that if an employee commits suicide during working hours and in the workplace, the cause is work. In order to refuse insurance cover, it has to be demonstrated that the death of an employee as a result of suicide had no connection with working conditions (Kieffer, 2013).

In the Slovak environment, the possibility of suicide compensation in the form of accident insurance claim according to The Social Insurance Act depends on whether we define suicide as a work injury or an occupational disease. Given that one of the identifying indicators of an occupational accident is that it occurs independently of the will of a person, its definition as an occupational accident is excluded. Similarly, the absence of external factors as a result of individual problems that are not work-related can also rule out these findings. The list of occupational diseases, as well as mental disorders, does not include suicide as a result of working environment factors. The solution would again be only to subordinate this consequence to the general responsibility of the employer for the damage or to subsume it under the so-called other health damage caused by work, which is a part of the list of occupational diseases.

In line with the list of occupational diseases of The International Labour Organisation, as well as The International Classification of Diseases, we are in favour of opinions calling for the mental disorders to be added to the list of occupational diseases. If the legal regulation is set on preventing of the increase of psychological workload, the regional authorities confirm the performance of hazardous work under the psychological workload (in the third and fourth categories of works), it is illogical then not to allow legislation to classify mental disorders as occupational diseases. Another option is to offer an additional category of the health damage directly related to work, which is neither an occupational accident nor occupational disease right into the wording of The Labour Code. It is this category that would make it possible to invoke compensation for such health consequences, which we cannot clearly assess, despite the fact that the link to work will be proven.

Mental workload as a legal reason for immediate termination of employment by an employee.

A recent fact in relation to mental workload is the possibility of an employee's legally permitted response to situations where the mental workload threatens his or her life or health. The imminent threat to life and health is the legal ground for refusing to perform work or complying with an instruction under the regulation § 47 Section 3 b) of The Labour Code, which the employer may not evaluate as a violation of the work discipline. At the same time, the imminent threat to life or health allows for the employees to terminate their employment immediately under the provisions of the regulation § 69 Section 1c) of The Labour Code.

The question is whether an employee can take advantage of the legal reality and decide on one of the legal procedures if it is based on a subjective perception that the mental workload causes an immediate threat to his or her physical or mental health. If the mental workload is part of the OSH legal framework, the options should relate to the effect of any factors that cause the condition. The Council Directive 89/391/EEC of June 12, 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work in Art. 8 nor the OSH Act in the regulation § 8, does not provide for a legal definition of the immediacy and seriousness of life or health threats. The state of existence of the immediacy and seriousness of the health threat is certainly clearer if the employee is under threat of various physical, chemical and similar factors such as fire, flood, gas leakage (Paceková, 2014). However, neither the provisions of the framework directive nor The OSH Act imply that the threat does not originate in other factors (e.g. psychological violence, long working hours). This depends on the interpretation of the notion of immediacy. In the case of a threat of psychological factors, immediateness should be seen through other criteria than the other risks.

Compared to the wording of The Labour Code, the OSH Act contains a more appropriate legal concept, i.e. an employee's reasonable presumption of imminence and seriousness of life or health threat (Barancová, 2013). According to the regulation § 8 Section 2 of the OSH Act, an employer may not consider it being an infringement if the employee refuses to work, has stopped work or left the workplace to go to safety if he reasonably believed that his or her life or health or the life of others was imminently and seriously threatened. In the regulation § 47 Section 3 b) nor in the regulation § 69 Section 1 c) of The Labour Code, the employee's procedure based on the reasonable presumption is not mentioned. Art. 13 of The International Convention No. 155 of 1981 on the safety and health of workers and on the working environment in the absence of work performance due to the fact that this work threatens his or her life or health is also based on the reasonable presumption ('he reasonably presumed'), whereby such employee should be protected in accordance with the national law against unjustified consequences.

In our opinion, even when evaluating a refusal or immediate termination of employment, the evaluation should also be based on the facts that prompted the employee to do so. According to expert opinions, the refusal of further work under the OSH Act permits objective but also subjective reason based on the evaluation of the situation of employees with respect to health status, qualification or experience (Paceková, 2014). These characteristics should also be taken into account in the event of a refusal to perform a job or immediate termination of employment. According to the current situation, if the employer evaluates the employee's conduct as a violation of the labour discipline and terminates the employment relationship with the employee, the question should be the subject of expert judgment in the case of invalidity of termination. A similar conclusion also arises from the employee's ability to terminate his employment immediately because of an immediate threat to his life or health

due to mental stress. For example, long working hours have been proven to be one of the stress factors by an expert judgment in a lawsuit, which in the context of an already confirmed health disorder, can seriously jeopardise health should the worker remains in the working environment. The aforementioned assessment was also adopted by the court in its justification (Judgment of The Prešov Regional Court, File No. 3CoPr/4/2015 dated November 11, 2015), to justify the immediate termination of employment due to an immediate and serious threat to life and health. The legal reason for immediate termination, unlike in the regulation § 69 Section 1 a) of The Labour Code, does not require a medical opinion, but it is appropriate, from the point of view of the legal certainty of the employee, to ensure that the factual definition of the case is substantiated by a medical report, a finding or an opinion. According to The Regional Court, such medical opinion should include an explicit statement that the work performed directly threatens the life or health of the employee and therefore cannot be carried on by the employee. Furthermore, this reason should be defined so as to be non-interchangeable with the reason under the regulation § 69 Section 1 a) of The Labour Code (see the justification of the judgment of The Regional Court Bratislava File No. 6 CoPr/6/2018 dated June 13, 2018). In our opinion, the immediacy and seriousness of the health threat should be more a matter of expert evidence than a precise reference to this in the presented medical reports. From the point of view of legal uncertainty, the law should then state that the immediate termination of the employment relationship for that reason should be the same as in the case of § 69 Section 1 a), and that is to be substantiated by a medical opinion or medical certificate, which would facilitate proof of the factual state of affairs.

Conclusion

The analysis of Slovak legal regulation showed that the legislator does not neglect the regulation of psychosocial factors in the workplace. On the contrary, it sets them as the employer's standard legal obligation. At the same time, however, a number of conclusions indicate that the equal approach to psychosocial risks in a working environment with the risks of a different nature is not achieved at many levels. Due to the impossibility of separating the individual factors of an individual, ensuring the same fulfilment of legal obligations by employers as well as by the control bodies is challenging and therefore often unimplemented. With a view of ensuring the effective reinforcement of the legislation, we call for an increase in control by the public authorities on the adoption of measures against psychosocial risks. A passive attitude towards the regulation by employers can act against them by harming employees' mental health, which is reflected in the absence of employees at workplaces due to incapacity for work, claiming damages for health, or even terminating employment. Possibilities of compensating the mental disorder are narrowed but not excluded. According to the legal status of *de lege lata*, a compensation for non-pecuniary damage to health is only possible under the general liability of the employer. Along with the increasing intensity of work-related stress, we share the views that call for the extension of the occupational disease catalogue by mental disorders. Another option is to extend the definition of occupational injury to include psychosocial injuries, such as accidents caused by excessive mental workload (overtime work, not taking leave, etc.). Against this background, the current legal situation does not even address the case of a mental workload of such an intensity that will result in an employee's suicide. Its possible conditionality through multiple life factors makes it difficult to recognise that it is a consequence of working environment factors. At present, it is not possible to assess the employee's death by suicide as a work-related injury because of the lack of a sign of health damage caused 'independently of the employee's will', but also a sign that the damage was due to 'external influences'. Again, *de lege ferenda* can only

consider the extension or opening of a definition of occupational injury, which would be more appropriate to the unconventional damage to health that may occur at work.

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Author contact

JUDr. Monika Seilerová, PhD., Pavol Jozef Šafárik University in Košice, Faculty of Law, Department of Labour Law and Social Security Law, Kováčska 26, 040 75 Košice, Slovakia.
Email: monika.seilerova@upjs.sk
Authors' ORCID: <https://orcid.org/0000-0002-9828-5264>