

## EMPLOYER'S DECISION ON ORGANISATIONAL CHANGES IS NOT A DECISION ON COMPANY MANAGEMENT

Recently, the Constitutional Court of the Slovak Republic considered the question of whether or not an employer's decision on organisational changes, namely on the redundancy of an employee, is a decision on the business management of a company.

In its ruling<sup>1</sup>, the Constitutional Court of the Slovak Republic ruled that the employer's decision on organisational changes is not considered to be a decision subject to the rules on business management of the company.

The substance of the dispute was that an action was lodged against the employer to determine that the termination of the applicant's employment by a notice on the grounds that the applicant's position had been abolished following the employer's decision on an organisational change was null and void and that the applicant's employment continued. According to the Labour Code, such a dismissal is subject to the employer's decision on an organisational change by which the employer determines which employee is redundant. This is a standard and very common way of terminating an employee's employment on the basis of an organisational change. However, in this case, the Supreme Court of the Slovak Republic concluded in its appeal decision that the decision on the organisational change was not made according to the rules on the adoption of a decision on the business management of the company, as it was not adopted by a majority of the company's executive directors, and was therefore invalid, which would have the effect of rendering the termination itself invalid. The notice of dismissal for redundancy was given in accordance with the organisational changes in the company, which were carried out in accordance with and as instructed by the company's executive directors. However, the employer, acting as the petitioner, argued that the decision on the organisational change was not only not taken in accordance with the statutory provisions on the business management of the company under the Commercial Code, i.e. by a majority of the executive directors, but it also did not have to be taken as described above. The petitioner therefore had to lodge a complaint to the Constitutional Court of the Slovak Republic in this case.

The finding of the Constitutional Court of the Slovak Republic is based on the fact that since the Commercial Code is not in a relationship of subordination (subsidiarity) to the Labour Code, the provisions<sup>2</sup> of the Commercial Code cannot be applied to the employer's written decision on organisational changes pursuant to the Labour Code<sup>3</sup>, according to which the decision on the business management of the company, which falls within the competence of the executive directors, requires the consent of a majority of executive directors, unless the Memorandum of Association provides for a higher number of votes. It is not possible to assess the protection of an employee by means of a commercial law institute which is intended to serve an entirely different purpose, namely the protection of the company vis-à-vis its internal situation, that is to say, in principle, the protection of its shareholders against the company's executive directors. According to the Constitutional Court of the Slovak Republic, the employer's written decision on organisational changes under the Labour Code may be taken by a person who is authorised to take the legal act of terminating employment<sup>4</sup> on behalf of the employer.

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This ruling of the Constitutional Court of the Slovak Republic only underlines the peculiarity of labour-law relationships and the different view of commercial and labour law of identical facts of the case. However, it is also significant that it was only the Constitutional Court of the Slovak Republic that upheld the opinion of the employer in this dispute. Although experience shows that in disputes between employers and employees, the employee is usually the prevailing party, it is clear that it is worthwhile for the employer to assert its rights using all legal means, including filing a complaint with the Constitutional Court of the Slovak Republic.

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<sup>1</sup> Finding of the Constitutional Court of the Slovak Republic, file No. IV. ÚS 512/2020-110, dated 20 April 2021.

<sup>2</sup> Section 134 of the Commercial Code

<sup>3</sup> Section 63 (1) (b) of the Labour Code

<sup>4</sup> Acts of employers in labour-law relationships are regulated in a comprehensive manner in Section 9 of the Labour Code.

bpv Braun Partners s.r.o.  
Europeum Business Center  
Suché myto 1  
SK-811 03 Bratislava

Tel.: (+421) 233 888 880  
Fax: (+421) 220 910 844  
www.bpv-bp.com  
bratislava@bpv-bp.com

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