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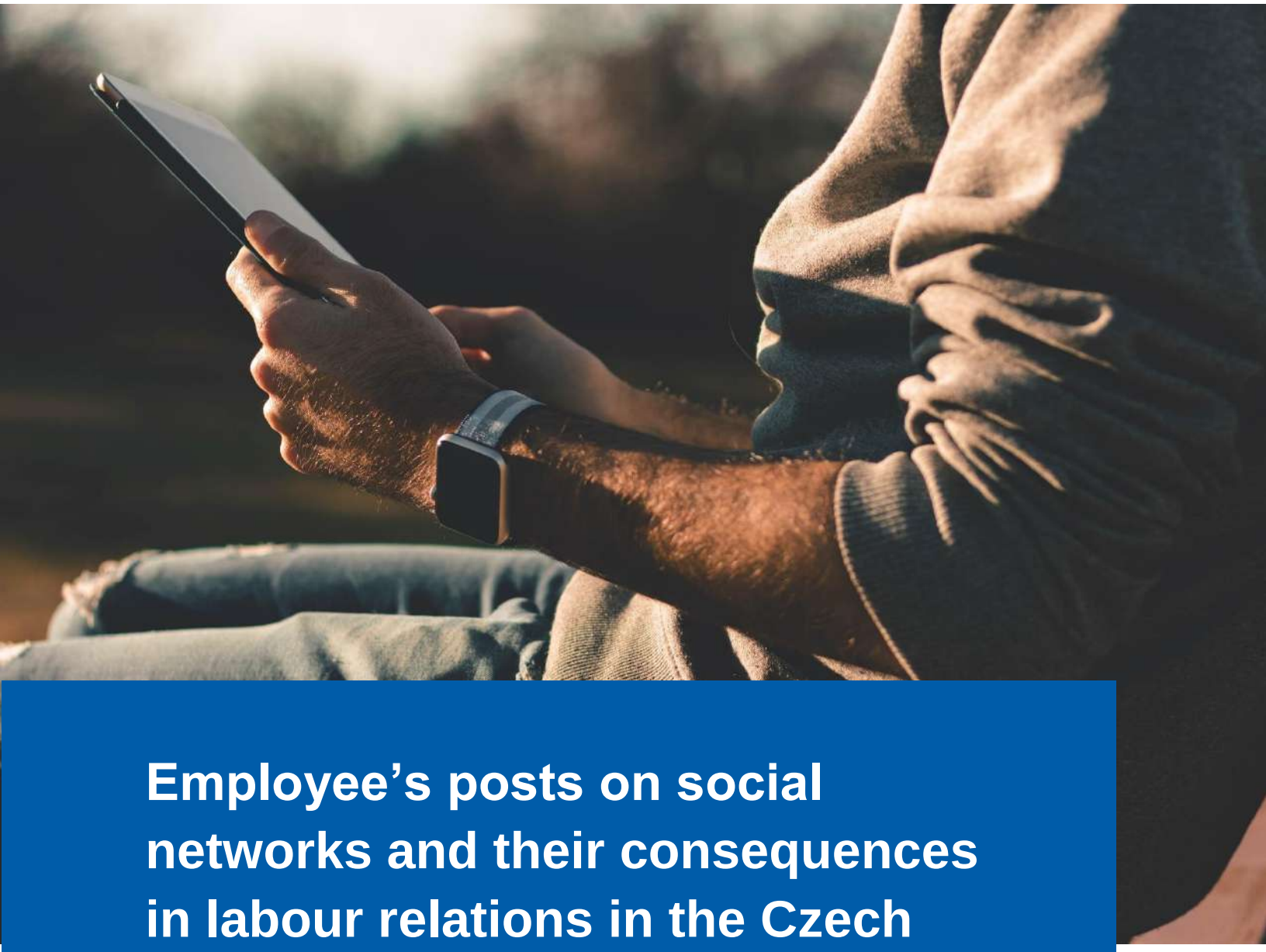

Employee’s posts on social networks and their consequences in labour relations in the Czech Republic

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Social networks affect our lives more and more and it is without any doubts that their significance and influence will further grow. Labour relations do not work in any vacuum and it is obvious that social networks gradually play an increasingly important role in relations between employees and employers.

Social networks are a possible wide platform for employer's relatively cheap and massive promotion with a boundless source of information of all kinds. However, they also have their downside – private using of social networks by employees during their working hours, employee's undesirable comments about activities in the workplace and opinions about employer or colleagues, publishing of information that includes trade secret or other sensitive data, sharing of employee's undesirable (e.g. racist, xenophobic etc.) private posts or, in general, sharing employee's worldview – their opinions about political, economic, religious and similar issues may be in conflict with employer's interests.

In this article, we would like to focus on the issue of expressing of employees concerning employer's rights and interests on private accounts on employee's social networks and their possible consequences.

1. Legal basis

There is not any special regulation of social networks in the Labour Code. Also, Czech case-law in this area is rather rare.

Legislation is based on the Charter of Fundamental Rights and Freedoms. It stipulates the protection of personality and privacy of a person, but also the freedom of speech and expression. In the Labour Code, it is necessary to focus on general provisions, especially Section 316 that governs use of employer's means by an employee, but also the protection of employees' privacy, and Section 301 that defines employee's basic duties.

2. Freedom of speech

The basic principle is the freedom of speech defined by Article 17 of the Charter of Fundamental Rights and Freedoms based on **which everyone has the right to express their opinions in word, writing, print, image or otherwise**.

In this context, the Supreme Court of the Czech Republic concludes, referring to case-law of the Constitutional Court of the Czech Republic and European Court of Human Rights, that **criticism of the employer is fundamentally admissible** with respect to the crucial importance of the freedom of speech. It can be indirectly inferred that the freedom of speech, in principle, must be also applicable in connection with employee's expressions on private accounts of social networks. According to a statement of the Constitutional Court, the freedom of speech applies not only to assertions or statements favourably accepted or considered harmless or insignificant, but also to those considered polemical, controversial, shocking, or even offensive for someone.

However, an employee should note that this freedom is not limitless, and that the freedom of speech **brings responsibility** for shared content.

3. The principle of loyalty and protection of employer's interests and property

Even the constitutionally guaranteed rights have their limits. It is generally accepted that employees have the **duty of loyalty, restraint and confidentiality** in relation to their employer.

In its decision-making practice, the Supreme Court concluded that the relationship of trust, employee's reliability and their honesty is essentially in employer-employee relations, and it requires every employee to **not cause any damage to their employer** by their overall behaviour in connection with the labour relation, whether property or moral.

The European Court of Human Rights has a similar opinion when it mentions that certain expressions of the freedom of speech, although they may be legitimate under certain circumstances, may not be legitimate in labour relations**. Therefore, if an employee publicly criticizes their employer on a social network or mentions their employer in some negative context, the limits of the freedom of speech are assessed from a different perspective, and in principle more strictly**, than if the employee criticizes other person (their friend, neighbour, or a car mechanic who badly repaired a car for them).

4. The boundary between employee's admissible and inadmissible expression

The exact boundary between employee's admissible and inadmissible expression on social **networks is not defined anywhere, so it is necessary** – as usual in labour relations – **to assess each case individually** based on its particular circumstances. It is always necessary to take into account and look for a fair balance between the mentioned employee's freedom of speech and legitimate interest of every employer for the care of their good public image.

Criticism of an employer is – as mentioned above – basically possible, but to be admissible, it must be **concrete, factual and must be based on true evidence**. Such criticism, of which main objective and purpose is to damage the employer, is inadmissible. If a true and concrete criticism is intended in favour of the protection of the public interest, especially in case of employers managing public funds, it is considered more likely admissible. Employees should not be punished for such objective criticism.

In order to find the boundaries of admissible and inadmissible expressions, we would like to mention below some examples of the practice of the Supreme Court, which did not all relate to social networks, but the conclusions mentioned in them can be reasonably applied, in our opinion:

- News employee complained in internet newspapers about the situation with their employer and compared it to totalitarianism. The Supreme Court concluded that in order to be admissible, criticism must be justified, i.e. based on true evidence, which was not proven in the given proceedings. Moreover, the criticism was made in an internet magazine and thus it reached the general public. In this case, employer's right to a good reputation outweighed employee's freedom of speech.
- In other case, it was also an unsubstantiated, i.e. unjustified criticism by the employee, but because it was mentioned during employees' internal meeting, it was found harmless and insignificant. Moreover, employer's management of public funds was criticized, which was found in compliance with the public interest.
- In other case, courts confirmed the validity of the immediate termination of employment of employees, who pointed out insufficiencies in employer's operation (wastewater treatment plant operator), because these employees were led by the public interest (so that the wastewater is truly clean), but they addressed their criticism not just to inspection

bodies, but also to others – private and legal entities, which was found an inadequate, i.e. inadmissible interference with employer's interests and good reputation.

- Even vulgar insults addressed to the supervisor were not found to be a reason for the immediate termination of employment, especially because they were made only between the employee and the supervisor in question, without the presence of other persons.

It is similarly applicable even to other employee's expressions than the criticism of their employer. It will depend on their particular content, but also on the method of their spreading or recipients, employee's motivation for such statements (if they intend to damage the employer). Obviously, in a direct conflict with employer's interests may be even any criticism of their important customer or generally inappropriate language in relation to employer's clients or business partners. Generally, given the reach of social networks and the factual impossibility of deleting a post once submitted, it must be concluded that any controversial **internet expression should be usually assessed more strictly** than an expression made through other means, which usually do not have such general reach. Important for the assessment of seriousness of any interference with employer's rights is also the circumstance, whether the post is **capable to damage the employer**, if a direct connection between the given person and the employer is obvious. If an employee has a publicly accessible private profile, in which they have mentioned their current employer (directly, by logo or, for example, a unique business clothing etc.), it cannot be ruled out that such **purely private post will also have consequences in labour relations**.

If we want to find case-law related directly to social networks, we must look abroad. However, the examples mentioned below must not be taken too seriously, because in each of them there were small things that made the court turn to one side or the other:

- In the Federal Republic of Germany, there was found justified the immediate termination of employment with an employee, who expressed their really negative (almost hateful) opinion about refugees on their Facebook profile. The reason was that the given act was on the verge of a criminal act (inciting hatred towards a group of people), but also the fact that the employee mentioned their employer on this profile, therefore they were connectable with them for recipients of this expression.
- There was a similar case of a Polish employee, who sent a photo with a Polish concentration camp from their private profile with the comment "Refugees are welcome in Poland". The employment of this employee was terminated immediately. However, the court in this case concluded, that because the photo was sent only to friends of the mentioned employee, but it was not publicly shared, then this is not the reason for such immediate termination of employment.
- German court also dealt with the case of a long-term ill employee, who expressed their opinion in their post on the private profile that supervisors are – to put it mildly – "not happy" about their illness. However, they hid their supervisors behind emoticons, namely "pig" and "monkey". Although it was found in the court proceedings that the colleagues, who were recipients of this post, precisely identified the supervisors that the employee had in mind, the court concluded that the immediate termination of employment was an inadequate punishment in this case and that a reproach should have been used instead.
- American university employee was fired for their post on social networks that Hurricane Harvey victims received a karmic punishment for voting Republicans.

5. Consequence of breach of employee's duties

It is necessary to always deduce consequences from the particular breach of duties and its circumstances. It is clear that all circumstances of each individual case will be decisive. In order to assess the degree of severity of the given breach of labour duties, it is necessary to take into account employee's personality, particular job performed by the employee, employee's current attitude to the performance of work tasks, employer, its position, type of performed activity, and also the period and situation during which the employee expressed their opinion, to whom and in which manner, whether it is connectable with the employer, is there any damage caused to the employer, whether the employee was writing their statement with a good intent to protect the public interest, or, vice versa, with a direct intent to damage the employer due to problems in the workplace etc. A court will always have the final say in assessing the degree of severity of employee's conduct in the event of a labour dispute (as you can see on the decisions mentioned above under point 4).

As for less serious breaches, for example, when an employee tells a vulgar evaluation of their supervisor between four eyes, **a reproach letter** is a possible remedy, i.e. a warning of the possibility of the immediate termination of employment in the event of any repetition.

Employee's more serious breaches, for example, untrue and publicly made accuse of their employer of committing illegal activities or other untrue ridicule of the employer on social networks that seriously damages their good reputation and provably causes, for example, a decrease of employer's orders, may lead even to the **termination of employment** without any reproach due to serious breach of work duties, or even, in exceptional cases, to the **immediate termination of employment**.

Further, every employer may defend themselves using the means provided by the Civil Code in the area of the **protection of legal person's reputation** or the protection against **unfair competition**, for example, in case of any infringement of trade secret. A natural person – for example, a supervisor or a colleague, who was shortened on their rights by the given post or employee's criticism on social networks, could defend themselves with both a legal action for the **protection of personality** and a criminal complaint for **slander**.

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