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# The Admissibility of Arbitration Proceedings in Labour Law Disputes in Slovak Republic

Andrea Olšovská and Marek Švec<sup>1</sup>

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**Abstract Purpose.** This analytical paper focuses on the possible use of arbitration proceedings in individual labour relations.

**Design/methodology/approach.** The paper presents an analysis of the present legal landscape and opportunities to use legal qualifications, to deal with individual labour law disputes.

**Findings.** Arbitration proceedings as an alternative form of dispute resolution are generally considered as a faster and less costly form of dispute resolution. However, the public perceives the practices of many arbitration tribunals as unfair.

**Research limitations/implications.** The scientific paper contributes to the discussion on the use of alternative forms of dispute resolution for labour law.

**Originality/value.** The scientific contribution provides further theoretical and practical information for discussion of obstacles related to out-of-court settlement of labor disputes

**Paper type.** Issues paper.

**Keywords:** *Labour law dispute, mediation, arbitration proceedings, employee, employer.*

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## 1. Introduction

Recently there has been an increase in interest, especially by employers, to include an arbitration clause in employment contracts to allow for the possibility to resolve future employee-employer disputes resulting from employment relation before an arbitration tribunal rather than before a general court. In that regard the question arises whether labour law disputes can be handled in arbitration proceedings. Quite often the opinion is encountered that this form of dispute resolution is possible since the current legislation does not ban this procedure. This possibility is concurred with even by the arbitration tribunal alone.<sup>2</sup> This analytical paper focuses on the possible use of arbitration proceedings in individual labour relations in Slovakia.

For the area of individual labour disputes in Slovak law system are three acts for resolution: Act No. 244/2002 Coll. on Arbitration Proceedings Act, Act. No. 160/2015 Coll. on Code of Civil Procedure and Act No. 335/2014 Coll. on Consumer Arbitration Proceedings. The correlation between the three acts mentioned above in Slovak legal system is not grounded, therefore it can lead to different legal uncertainties in practical use.

Drawing from the currently effective legislation (1 July 2016) we suggest that labour law as well as other legal regulations do not permit arbitration proceedings in labour relations. There are opinions claiming the admissibility of these proceedings in the area of labour law; the inadmissibility can be justified by protection of the weaker party and employees certainly are considered to be the weaker party. To protect the weaker party, the legislators, for example, adopted a new act on consumer arbitration proceedings (effective since 1 January 2015) and a new Code of Civil Procedure (Act No. 160/2015 Coll. Civil Dispute Procedure Code, effective from 1 July 2016). A specific type of court proceedings has been included in the Code of Civil Procedure, namely “disputes with protection of the weaker party”. In the instance of labour law disputes the existing actual and legal inequality between an employee and the employer will be confirmed. Equal status will not be achieved through a more advantageous position of the weaker party vis-a-vis the other party but through debilitation of certain formal requirements for proceedings of the parties to the dispute and through strengthening of powers of the court alone. Disputes with protection of the weaker party and their formal

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<sup>2</sup> Accessible at: E.g. <http://www.casb-global.sk/rozhodcovsky-sud> [quote of 30 June 2016]

procedural terms and conditions will present certain exemptions from the general legal regulation governing the dispute proceedings and will primarily apply to disputes concerning labour, consumer and equal treatment issues.

## 2. Disputes that can be Resolved in Arbitration Proceedings

Act No. 244/2002 Coll. on Arbitration Proceedings as amended (hereinafter only as “Arbitration Proceedings Act”) stipulates which disputes can be resolved in arbitration proceedings. The Arbitration Proceedings Act regulates that within this alternative dispute resolution mechanism disputes shall be resolved that have arisen from domestic and from international commercial and civil law relations if the site of the arbitration proceedings is in the Slovak Republic (§ 1 paragraph. 1 subparagraph a) of the act). Subsequently, paragraph 2 of this provision stipulates that in arbitration proceedings all disputes can be resolved that are related to legal relations on which a settlement agreement can be concluded (under § 585 of the Civil Code; note: a settlement agreement with regard to *numerus clausus* of contract types in the Labour Code; also taking account of the subsidiary scope of the Civil Code, cannot be concluded in labour relations) including disputes over designation whether there is or is not a law and legal relation. Since this provision follows up paragraph 1 of § 1 of the Arbitration Proceedings Act, paragraph 2 also covers only commercial and civil law relations. For that reason it is obvious that no disputes resulting from labour relations are to be heard in arbitration proceedings.<sup>3</sup>

Simultaneously, the Arbitration Proceedings Act, § 1 paragraphs 3 and 4 specifies which disputes cannot be resolved in arbitration proceedings<sup>4</sup>

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<sup>3</sup> ŽUEOVÁ, J. (2015) Legal issues associated with nepotism in the workplaces in the Slovak Republic. In *European Scientific Journal*. Special edition. Vol. 1, pp. 10-17.

<sup>4</sup> Provision of § 1 of the Arbitration Proceedings Act (effective since 1 July 2016):

“(1) This act regulates

a) deciding over disputes derived from domestic and international commercial law and civil law relations if the arbitration takes place in the Slovak Republic,

b) recognition and enforcement of domestic and foreign arbitration decisions in the Slovak Republic.

(2) Arbitration proceedings can be applied to decide over all disputes related to legal relations that can be concluded through a settlement agreement including disputes over determining whether law or legal relation does or does not exist.

(3) Arbitration proceedings cannot be used to decide disputes

a) over creation, change or cessation of ownership titles and other substantive titles for real estate,

b) over personal status,

and does not list disputes resulting from labour relations.

### 3. Labour Law Disputes and Arbitration Proceedings

Certain authors deduce *the possibility to resolve labour law disputes in arbitration proceedings since the act does not exclude these disputes from arbitration proceedings* under the provisions § 1 paragraphs 3 and 4 of the Arbitration Proceedings Act.

If the legislators envisioned the application of arbitration proceedings also for the area of labour law, we suggest that they would have included this possibility directly in § 1 paragraph 1 subparagraph a) of the Arbitration Proceedings Act since it makes a difference between civil law and commercial law relations (the act does not use the more general concept of “private law”).

Civil law as well as commercial law belongs to the area of private law that undoubtedly also includes labour law (although in the instance of labour law rather its hybrid nature may be considered because it includes also the public law standards). The Arbitration Proceedings Act explicitly reckons with proceedings in the areas of civil law and commercial law relations. If labour matters were also to be heard within these specific proceedings, § 1 paragraph 1 subparagraph a) of the Arbitration Proceedings Act would so state. For these reasons claiming that *labour law*, especially taking account of the subsidiary scope of the Civil Code vis-a-vis the Labour Code (under § 1 paragraph 4 of the Labour Code), *can be considered as an integral component of civil law, and thereby labour relations are civil law relations thus allowing arbitration proceedings to also be applied in labour relations*, fails to stand the proof.

If this conclusion is acknowledged, the question arises why the Arbitration Proceedings Act explicitly mentions commercial law relations as a possible matter for arbitration proceedings since the subsidiarity principle also holds for the relations between the Commercial Code<sup>5</sup> and the Civil Code. It could be said the relation to the Commercial Code

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*c) related to compulsory enforcement of decisions,*

*d) that arose in the course of bankruptcy or restructuring proceedings.*

*(4) Under this act, arbitration proceedings cannot be applied to decide disputes between supplier and consumer derived from, or related to, a consumer contract that can be decided through consumer arbitration proceedings.”*

<sup>5</sup> Provision § 1 paragraph 2 of Commercial Code: Legal relations under paragraph 1 are governed by provisions of this Code. If certain issues cannot be resolved according to these provisions, they shall be considered according to trade usage (commercial practice) and, in the absence of this, according to the principles upon which this Code is based.



includes subsidiarity application of the Civil Code to a larger extent than the relation between the Labour Code and the Civil Code, in which only general provisions of the Civil Code<sup>6</sup> are used for labour relations (in simple lay terms it can be said that there is a tighter relation between the commercial and civil laws than between the civil and labour laws).

The difference made between civil law and commercial law relations within the Arbitration Proceedings Act alone, in our opinion, overcomes the assumption that arbitration proceedings can be applied also to labour relations; specifically because even though the Arbitration Proceedings Act does not mention labour relations, the interpretation of this act “has to seek assistance in legal theory and draw from the purpose of the act”. The Slovak arbitration practice and judicature have so far not had an opportunity to take a stance in this matter. There is no doubt that *voluntary arbitration in general, and also under the Arbitration Proceedings Act in a broader sense, covers legal relations and disputes in the area of private law. This includes primarily civil law relations and commercial law relations that are not explicitly mentioned in the Arbitration Proceedings Act.* A relevant delineation of the private law area can be found in the publication *Základy Občianskeho hmotného práva (The Basics of Civil Substantive Law)*<sup>7</sup>. *The authors suggest that the private law area partially includes also the labour law as a specific private law, in particular that part of it which is called individual labour law while the so-called collective law falls into the area of public law. The area of private law also includes labour law as one of its fundamental branches. For that reason, parties to labour relations can, in our opinion, be parties to arbitration proceedings. This conclusion is underpinned also with argument from the contrary (argumentum ex contrario). Judicial conciliation matters may include also a worker’s claim for wage compensation and a company’s claim for damage compensation under the Labour Code just like any other monetary claim. In this way another condition for arbitrability has been met under the Arbitration Proceedings Act, namely the possibility to end a dispute in a judicial conciliation, including in cases of labour relations. Yet, the admissibility of arbitration in labour law disputes is limited only to individual property rights under these relations;*

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<sup>6</sup> Provision § 1 paragraph 4 of Labour Code: Unless stipulated otherwise by the part one of this Act, the general provisions of the Civil Code shall apply to legal relations according to paragraph 1.

<sup>7</sup> LAZAR, J. et al. *Základy občianskeho hmotného práva (Fundamentals of Civil Substantive Law)*. 2<sup>nd</sup> Edition. Vol. 1. IURA EDITION, Bratislava, pp. 9 - 11.

collective rights-related disputes cannot be subjected to arbitration.<sup>8</sup> This opinion was presented at the time of legislation that dealt with *property* disputes that have arisen from domestic and international commercial law and civil law relations if the site of the arbitration proceedings is in the Slovak Republic.

Arbitration proceedings in labour relations were also perceived as admissible especially with regard to legal regulation in § 1 paragraph 1 subparagraph a) of the Arbitration Proceedings Act effective until 31 December 2014 under which this act regulated decisions over *property* disputes that had arisen from domestic and international commercial law and civil law disputes if the site of the arbitration proceedings was in the Slovak Republic (at present the concept of “property” is not laid down) and the labour relations should be of a proprietary nature.

Considering the above, we suggest that labour relations cannot be dealt with in arbitration proceedings because even though the act does not explicitly exclude these from its scope (§ 1 paragraph 3 of the act), it does not mention them either (§ 1 paragraph 1 subparagraph a) of the act). If the act directly makes a difference between civil law relations and commercial law relations and does not mention labour law relations at all (the question of admissibility of arbitrability for labour relations could be assessed differently (more broadly) only if § 1 paragraph 1 subparagraph a) of the act specified that the act regulates arbitration proceedings for disputes that have arisen from private law relations; yet, that legal regulation does not exist). We suggest that the arbitration agreements (clauses) included in labour contracts are invalid.

Another argument underpinning the impossibility of laying down the arbitration clause is also the principle of restriction for contract types laid down in labour law in § 18 of the Labour Code.

In general, judicial protection is regulated in article 9 of the Fundamental Principles of the Labour Code. Under this provision, employees and employers who sustain damage due to breach of obligations arising from labour relations may exercise their rights in court. Employers may neither disadvantage nor damage employees based on employees exercising their rights stemming from labour relations.<sup>9</sup>

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<sup>8</sup> HRIVNÁK, J. Základy arbitráže. Prvá časť (Arbitration Basics. Part One) [Systém ASPI] BSA. In *Bulletin slovenskej advokácie* [cit. 30.6.2016]. ASPI\_ID LIT34083SK. Available in Systém ASPI.

<sup>9</sup> BARANCOVÁ, H. (2013) *Employment conditions of business in Slovakia*. 1st ed. Peter Lang, VEDA; Frankfurt am Mein, Bratislava, p. 50.

Next, § 14 of the Labour Code (settlement of disputes) stipulates that disputes between an employee and employer over claims deriving from labour law relations shall be heard and decided by courts. Current Slovak legislation does not spell out specific court proceedings for the area of labour relations and for that reason it draws from the general civil procedure law. The applicable provision does not stipulate which courts shall hear labour law-related issues and for that reason this provision cannot be interpreted too broadly, meaning that labour law disputes can be heard also in arbitration tribunals. It could be said that it is generally accepted that the Labour Code reckons with general courts dealing with disputes. This can be derived also from § 7 paragraph 1 of the Code of Civil Procedure under which within civil procedure the courts hear and decide disputes and other legal matters that result from civil law, labour, family, commercial and economic relations, unless those are heard and decided by other bodies under the relevant law.

Besides § 14 of the Labour Code, the possibility of judicial protection is also laid out in § 13 paragraph 6 of the Labour Code. Under this provision, an employee who believes that his/her rights or interests protected by law were aggrieved by failure to comply with the principle of equal treatment or by failure to comply with the principle that enforcement of the rights and obligations arising from labour relations must be in compliance with good morals and that nobody can abuse such rights and obligations to the damage of another participant in a labour relation, may have recourse to a court and a claim of legal protection stipulated by the Antidiscrimination Act. The procedure regulated in the Antidiscrimination Act shall be used for proceedings related to discrimination issues as well as to issues related to assessing whether the rights and responsibilities are in compliance with good morals and abuse of rights.<sup>10</sup>

The question whether an arbitration proceeding is authorised to decide over a labour law dispute has already been dealt with by courts. The Supreme Court of SR<sup>11</sup> dealt with this in its ruling, inter alia, of the question whether property-related disputes that arise between an employer and an employee from labour relations are or are not excluded from arbitration proceedings (the court was also dealing with the matter of overruling the arbitration decision). The arbitration decision of 7 November 2008 awarded the obligation to the employee to pay a certain

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<sup>10</sup> BARANCOVÁ, H. (2016) Labour law in the Slovak Republic during the post-crisis period. Selected issues. In *Forum iuris Europaeum*. Vol. 4, n. 1, pp. 5-21.

<sup>11</sup> Ruling by the Supreme Court SR, sp. zn. 1 Cdo 156/2011.

amount, including delay-based interest, as compensation for damages (the employment contract agreed on 1 April 2007 also included an arbitration clause) to the employer. Both the district court (ruling of 28 October 2010) and the regional court (ruling of 24 May 2011) ruled in accord that the arbitrator did not have enough authority to decide over this dispute in arbitration proceedings and the Supreme Court of SR then confirmed the finding of these courts. *“The appeals court also pointed out that not all property-related disputes can be heard in arbitration proceedings; the concerned property dispute between the parties was judged by the Supreme Court in accord with the first instance court as a property dispute between the former employer against the former employee, as a labour relation-related dispute. Taking account of the nature of the dispute, again in accord with the first instance court, it considered that the concerned dispute was excluded from the scope of authority of the arbitration tribunal; hearing and deciding over this kind of dispute falls under the scope of authority of a court in civil proceedings (§ 14 of the Labour Code). If, in spite of exclusion of the matter from jurisdiction of an arbitration tribunal, the matter was decided, that fact is a ground for annulment of the domestic arbitration ruling...”* The Supreme Court SR wrote in its ruling: *“The lower courts have established in this matter that in a property-related dispute between the proceedings’ parties, which was decided in arbitration proceedings on 7 November 2008, the arbitrator JUDr. M.H. in arbitration ruling No. RK 20/2008, the issue was a claim derived from labour relation between the parties to the proceedings: compensation for damages or surrendering the unjust enrichment. Subsequently, they concluded the lack of jurisdiction for the arbitration tribunal to hear and decide in the concerned property-related dispute between the parties, drawing from the legal opinion that disputes between employees and employers over claims derived from labour relations fall under the jurisdiction of general courts, and such disputes are excluded from decision-making in arbitration proceedings; this opinion has been considered as correct also by the admissibility-related appeals court.*

*The authority in general is understood as the competence of a certain body to hear and determine matters that are entrusted (fall under) its scope of activities.... Arbitration proceedings, as an alternative dispute resolution to a ruling by general (state) courts with undoubtedly growing importance, obviously exceeds its original purpose as an instrument for traders to resolve their mutual disputes. The fact that under Act No. 244/2002 Coll. on Arbitration Proceedings the arbitration proceedings are not limited only to property-related disputes resulting from commercial relations, as was the case of the regulation under Act No. 218/1996 Coll. on Arbitration Proceedings (§ 1, § 2 paragraph 1 of the quoted act), but can now be applied to property-related disputes resulting from civil law relations (§ 1 paragraph 1 of the act), does not mean that it can be applied to (that it covers) also a property-related dispute resulting from labour relations; there is no relevant ground for this kind of extension (extensive interpretation). It clearly results from the procedural standard that in the case of*

*authority to handle property-related disputes the decision was to specify just two partial areas when, out of the scope of jurisdiction of civil courts (§ 7 paragraph 1, Code of Civil Procedure) the legislators gave the authority to decide property-related disputes resulting from commercial and civil relations in proceedings in front of an arbitration body. The legal system of the Slovak Republic at the time when Act No. 218/1996 Coll. became effective, and currently, does not give the possibility to hear and determine employee-employer disputes over claims resulting from labour relations to bodies other than courts.*

*Under the fundamental principle laid out in Article 9 of Act No. 311/2001 Coll. (Labour Code) employees and employers who sustain damage due to breach of obligations arising from labour relations may exercise their rights in court. Employers may neither disadvantage nor damage employees for reason of the employees exercising their rights resulting from labour relations. The Labour Code, § 14 on dispute resolution governs that disputes between an employee and employer over claims deriving from labour relations shall be heard and decided by courts. This regulation continually follows up the previous legal situation where the Labour Code, Act No. 65/1965 Coll. as amended, § 207 stipulated that disputes between employers and employees over claims deriving from employment relations shall be heard and decided by courts. Admissibility of the subject-matter of the arbitration proceedings shall be always judged under the Arbitration Proceedings Act (compare § 5 paragraph 1 last sentence of the act) and the arbitration tribunal, meaning a single arbitrator or several arbitrators, (§ 7 paragraph 1 of the Act), shall handle the issue whether the cumulative conditions stipulated in § 1 paragraphs 1, 2, 3 of the Act have been met. If they have decided over a property-related dispute between an employee and the employer that resulted from labour relation, this is grounds to file a lawsuit for annulment of the arbitration decision under § 40 subparagraph a/ of the Act (although the reference in parenthesis in this ground, where only § 1 paragraph. 3 of the Act is mentioned, does not correspond to the wording-based limitation of the concerned ground that is broader: “an arbitration ruling was issued in a matter that cannot be the subject-matter of an arbitration proceeding”). That much about the question whether property-related disputes between an employee and the employer derived from labour relation are excluded from decision-making in arbitration procedures.<sup>12</sup>*

Deciding labour law disputes only in general courts can also be underpinned with another ruling by a general court that dealt with the issue of permissibility of arbitration proceedings in labour relations with regard to an invalid termination of employment where the employer objected that the court had insufficient authority to hear and decide over a dispute over invalidity of termination of employment on grounds of

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<sup>12</sup> Ruling of the Supreme Court SR, sp. zn. 1 Cdo 156/2011.

conclusion of an arbitration clause. The court examined whether it was or it was not authorised to deal with the case determining whether the termination of employment was invalid and issued a resolution in the matter. The court stated in the resolution that once it becomes valid, it will continue the proceedings for the submitted proposal (for invalidity of the termination of the employment relation).

The court examined whether it did have or did not have the authority to determine if the termination of the employment relation was invalid. According to the court, “*labour relations in their essence are property-related relations*”<sup>13</sup> (both parties conclude a contract for the purpose of a reward; the employer to gain profit generated by the employee, and the employee to get a wage or remuneration). They are not spelled out as included in the list of disputes that shall not be decided in arbitration proceedings (§ 1 paragraph 3 of the Arbitration Proceedings Act). The non-specific word “courts” (§ 14 of Labour Code) could also mean everybody that carries out an independent judicial performance. Despite that it needs to be pointed out that applying the Arbitration Proceedings Act also to labour relations is excluded because there is no legal regulation that explicitly allows resolving disputes grounded in labour relations in front of arbitration tribunals. Moreover, arbitration proceedings have been developed for the needs of entrepreneurs. It is supposed in commercial relations that the contractual parties are formally in equal positions and have technical prerequisites for agreeing to their contractual terms and conditions including an arbitration clause. To the contrary, employers and employees are not in equal positions and the employee, as the weaker party<sup>14</sup> may be substantially disadvantaged. It is to the factual and economic inequality of the parties to the contract that labour law responds to and provides judicial protection of violated or jeopardized rights through courts. Under the Arbitration Proceedings Act arbitration proceedings may be used to handle “disputes derived from commercial and civil relations” meaning that in the Slovak Republic handling certain

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<sup>13</sup> Legal regulation of § 1 of Arbitration Proceedings Act valid till 31 December 2014 related to § 1 paragraph 1 subparagraph a):

This act regulated deciding over *property-related disputes* derived from domestic and international commercial law and civil law relations if the arbitration proceedings take place in the Slovak Republic, (author’s comment: law effective from 1 January 2015 has abandoned the concept “property-related”).

<sup>14</sup> It can be noted that the regulation responds to the issue of protection of the weaker party also in relation to arbitration proceedings and a regulation was adopted for consumer protection. Under § 1 paragraph 4 of Arbitration Proceedings Act, this law cannot be applied to decide disputes between suppliers and consumers derived from or related to a consumer contract that can be decided in consumer arbitration proceedings. Specific proceedings related to consumers are regulated in Act No. 335/2014 Coll. on Consumer Arbitration Proceedings as amended (effective from 1 January 2015).

*kinds of labour law disputes, property disputes derived from family relations or property disputes derived from economic relations (compare the wordings of § 7 paragraph 1 of the Civil Procedure Code where labour relations are not identical to civil relations) are excluded. The effective legal regulations exclude subjecting labour relations, including certain disputes derived from labour relations of a property nature (such as disputes over payment of unpaid wages, disputes over severance pay, over compensation for damages grounded in the employment relation, over surrendering a thing entrusted by the employer to the employee for performance of the work, over payment of financial claims resulting from material responsibility) to arbitration proceedings. A similar approach is applied also to other civil law areas (civil relations) in the area of consumer protection. The court has also noted that the arbitration clause... of the employment contract... is in writing but its content is directed at the complainant as an employee waiving her/his rights in advance and this is in conflict with § 17 paragraph 1 of the Labour Code. The complainant waived a labour law dispute to be dealt with at a court other than an X arbitration tribunal and as a result her/his right to court or other legal protection under article 46 of the SR's Constitution may have been violated because a doubt has been cast over the equality of the parties to the proceedings. [...] Since the arbitration clause is related to a labour relation which, in the court's opinion, cannot be heard and decided in arbitration proceedings, and also the complainant, as an employee, has waived her/his rights in advance, the clause is invalid and the objection concerning the authority of the district court in BB that was raised by the adversary, was rejected by the court as ungrounded under § 106 paragraph 1 of Civil Procedure Code.”<sup>15</sup>*

#### **4. Other Possibilities for Alternative Resolution of Labour Law Disputes**

Mediation, another form of resolving disputes outside a courtroom, has not been used much recently. Mediation is governed by a special act No. 420/2004 Coll. on Mediation as amended (hereinafter only as the “Mediation Act”) and its § 1 paragraph 2 explicitly envisions that the Mediation Act also covers disputes derived from labour relations.<sup>16</sup> Under

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<sup>15</sup> Ruling of District Court Banská Bystrica, sp. zn. 8 Cpr/1/2015 (legal regulation relevant to application of court decision: creation of labour relation under employment contract of 14 September 2011, termination of employment relation by agreement of 4 February 2013; case filed on 2 March 2015).

<sup>16</sup> §1 ods. 2 of Mediation Act: “This act applies to disputes derived from civil law relations, family law relations, commercial liability relations, and labour law relations. This act also covers cross-border disputes derived from similar legal relations with exception of those rights and responsibilities that cannot be handled by the parties under the legal system that governs the concerned legal relation under specific regulations.”

this provision the Mediation Act applies to disputes derived from civil law relations, family law relations, commercial liability relations, and labour law relations. This act also covers cross-border disputes derived from similar legal relations with the exception of those rights and responsibilities that cannot be handled by the parties under the legal system that governs the concerned legal relation under specific regulations.<sup>17</sup>

From the Mediation Act it follows that the *legislators have made a difference between civil law relations and labour law relations* and for that reason the argument mentioned also (above) in relation to admissibility of arbitration proceedings for labour law disputes that claims that these disputes are civil law disputes does not hold.

Opinions appear in specialized discussions that ask whether mediation is at all possible in labour law relations if we draw from just the legal regulations in the Labour Code (Act No. 311/2001 Coll. as amended). The Labour Code, within the individual labour law disputes, spells out the form of handling disputes between employees and employers when it entrusts them primarily to the competence of general courts. The § 14 of the Labour Code is not of a dispositive nature and does not allow entities in a labour law relation to choose between an alternative dispute resolution and settlement of the dispute in a court because the authority to hear and decide disputes between employees and employers over claims deriving from labour law relation fall only under the authority of courts. Just the same, inadvertence on the part of the legislators needs to be pointed out when they failed to more specifically outline the nature of a dispute that can be handled through mediation in the Mediation Act; a situation that may result in multiple problems in practical application. Labour law protection, presenting the foundation of the existence of labour law, is manifested through a high proportion of cogent provisions that constitute the fundamental labour law standard that cannot be departed from. A general statement could be made that in the instance of individual labour law relations it may seem that presently there is no other possibility to reach a final and binding dispute resolution than using § 14 of the Labour Code, meaning through a court trial. Regardless whether the employee or the employer did or did not use a mediator during the bargaining process, whether they did or did not follow the Mediation Act, the question is whether their dispute resolution must in all instances be

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<sup>17</sup> BULLA, M. (2012) Collective redress of posted workers' claims. In *CLR news*. Vol. 5, n. 1, pp. 17-29.



decided through court proceedings. The disadvantage can be mentioned that the mediator does not issue a binding decision for a labour law dispute (and the frequent problem of non-enforceability of the decision). Yet, it can be stated that if the specific Mediation Act admits mediation for disputes derived from labour law relations, it is a special regulation that is valid alongside the Labour Code and for that reason mediation is admissible for labour law disputes, in contrast with the issue of admissibility of arbitration proceedings in the labour law area.

## 5. Conclusion

Arbitration proceedings as an alternative form of dispute resolution are generally considered as a faster and less costly form of dispute resolution than resolution in trials in general courts. However, the public perceives the practices of many arbitration tribunals as unfair (cases are known where the arbitration tribunals failed to proceed in compliance with legal standards or good morals and their decisions resulted in the existential jeopardy of natural persons) and for that reason we consider that if arbitration proceedings could be applied also to labour law relations in which the employee is the weaker party, the position of the employee would be deteriorated in the end.<sup>18</sup> Alternative forms of dispute resolution for labour law disputes could be considered if there were a different legal culture.

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<sup>18</sup> ZAUŠKOVÁ, A. – MADLEŇÁK, A. (2014) *Communication for open innovation. Towards technology transfer and knowledge diffusion*. Dom Wydawniczy Michal Kolinski, Ksiezy Mlyn, pp. 13.

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