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Good Manners and the Prohibition on the Abuse of Rights in Slovak Labor Law¹

Abstract: The author of this article tries to summarize and provide knowledge about good manners, and places them in the context of labor law in the Slovak Republic. Good manners serve as a criterion that restricts subjective rights in their content, or often as a criterion that limits the exercise of subjective rights. They represent a positive limit to the exercise of rights and obligations arising from employment relationships. The term “good manners” is not defined in law, but we encounter this corrective directly within the basic principles in Art. 2 of the Labor Code. The negative limit on the exercise of subjective rights and obligations arising from employment relationships is the prohibition on abusing these rights to the detriment of the other party to the employment relationship or co-employees. According to the provisions on the invalidity of legal acts, the subject’s conduct contrary to good manners and abuses of rights are subject to absolute invalidity. The prohibition on the abuse of rights is a legal norm, the violation of which by an authorized subject is an illegal act.

Keywords: good manners, Labor Code, morality, prohibition on the abuse of law

Introduction

In classical Roman law, it was known and acknowledged that any perfect legal norm or provision of a law could not be applied or enforced only formally, literally and strictly, as this would not necessarily lead to desirable and socially acceptable results. This finding relates to the thesis *Summum ius, summa iniuria* (“the most

1 The scholarly contribution was prepared within the project no. APVV-18-0443 entitled “Penetrations of labour law into other branches of private law (and vice versa)”; the responsible researcher is Prof. JUDr. Mgr. Andrea Olšovská, PhD.

consistent law, the greatest injustice,” or “the best executed law may ultimately be the greatest injustice”). It can be deduced from this that Roman lawyers were already aware that the law must be implemented in the light of other criteria which would reduce the harshness of the law, and that was precisely the criteria of equity². Trust is especially important in human relations – because without trust there would be no society – so one of the main functions of the legal order is to protect trust in human relations and to punish broken trust. In order to protect trust, the legal order with classical, descriptive legal concepts is not enough, but must construct concepts that take into account the moral, internal relationship of man to himself and the external relations between people³. There was a need to correct the harshness, antisociality or immorality that occurred as a result of the strict application of legal rules, through the use of a non-legal system of rules⁴.

Over the course of historical development, these criteria have evolved, crystallized and endured until modern times, especially in the form of rules such as good manners, principles of fair trade, business practices, etc. Together, they form a set of non-legal rules that help humanize the realization of law, which have not only kept their relevance since ancient Rome but have even increased it in modern times⁵.

1. About Good Manners

Among the above-mentioned criteria, which are a measure of the exercise of the law, it is necessary to first mention “good manners” (*boni mores*). This measure, which has found quite wide application in legal systems, is not only the oldest, but also the most common. Good manners appear in Roman classical law, where they served as a corrective to bring the formal application of legal norms closer to the requirements of removing harshness, antisociality and immorality in decision-making.

Because moral norms are not considered to be legal norms and are therefore not legally enforceable in themselves, good manners are a legal concept but without direct normative content. Unlike legal norms, they are not created by the state, but arise independently of the state in human society during its development. Normative content is obtained in good morality by their application and their fulfilment by specific value aspects taken fundamentally from the sphere of philosophy. With this

2 P. Blaho, *Aequitas ako correctio iuris v rímskom súkromnom práve*, (in:) J. Prusák, E. Bakošová, N. Vaculíková (eds.), *Slušnosť v práve. II. Lubyho právnické dni*, Bratislava 1993, pp. 97 et seq.

3 P. Dostálík, *Otázka dobrých mravů a dobré víry v římském právu obligacním a věcném*, (in:) P. Mach, M. Pekarík, V. Vladár (eds.), *Constans et perpetua Voluntas. Pocta Petrovi Blahovi k 75. narodeninám*, Trnava 2014, p. 105.

4 J. Lazar et al., *Občianske právo hmotné*, Bratislava 2006, p. 20.

5 For example, the rule already known in Roman law that contracts *contra bonos mores* are invalid has been transposed into virtually all civil codes of Western and Central Europe, where they are still very intensively applied.

takeover, the basic values and, respectively, value aspects become legal rules through the concept of good manners⁶.

The function of good manners in private law is derived from the inclusion of this vague concept in the framework of positive law, i.e. within the text of the legislation. Their normative influence is given by their normative meaning, but it is not always unambiguously interpreted and from time to time there are tendencies to extend the flexibility of the content of good manners by the flexibility of its normative function, which was clearly not the intention of the legislator and which is fundamentally unacceptable⁷. Many legal regulations, not excluding labor law, add legal relevance to moral rules by explicitly referring to them or establishing the legal consequences for their violation. Good manners do not have the original normative force, but only in connection with the legal norm that determines their application, and only to the extent that it allows⁸.

If the labor law allows and respectively shows good manners, good manners can be considered a source of law. From the point of view of the interpretation and application of the provisions containing the criterion of good manners, it must be borne in mind that the very concept of good manners is controversial in theory, and that the rules of good manners are not their use. It follows from the above that in the interpretation and application of these provisions, much room is left for courts and other entities in completing the law in appropriate social and ethical contexts in accordance with the fundamental value order, which is recognized by the majority of the population at a given stage of society. After all, the concept of good manners is derived from the Latin *mos*, which means morality or habit, or rather the awareness of the whole about what is and is not right⁹.

According to Knapp, good manners can be characterized as a measure of the ethical evaluation of specific situations, corresponding to the generally accepted rules of decency¹⁰. According to Lazar, the concept of good manners includes those generally accepted norms of morality which represent the fundamental value order of society, which also forms the basis for the legal order¹¹. As Lazar continues, in the absence of a generally valid definition of good manners, the determination of their content in a particular case must be based on the premise that good moral rules are not immutable, that good manners are subject to certain evolutionary changes depending on changes in society, which determine the level of social, moral and legal feeling in society, and secondly, the fact that the circumstances and the environment

6 J. Hurdík, J. Fiala, M. Hrušáková, Úvod do soukromého práva, Brno 2006, p. 91.

7 *Ibidem*.

8 A. Olšovská, Pracovní pomer, Prague 2017, p. 28.

9 P. Dostálík, Otázka dobrých mravů... , *op. cit.*, p. 110.

10 V. Knapp, Teórie práva, Prague 1995, p. 85.

11 J. Lazar, Dobré mravy v občianskom práve, (in:) J. Prusák, E. Bakošová, N. Vaculíková (eds.), Slušnosť v práve. II. Lubyho právnické dni, Bratislava 1993, p. 111.

are always different in a particular case. Any interpreting body that examines the extent to which certain legally relevant conduct of the parties to a civil relationship corresponds with or is contrary to good manners must take both aspects into account. Only in this way can it be possible in a specific case to determine the content of good manners in civil law¹². According to Salač, good manners are rules of a moral nature and in certain circumstances can acquire the nature of a legal norm, permeate the entire legal order, represent a set of rules of conduct, express a certain standard of decency in interpersonal relations and at the same time define moral principles of social order¹³.

Interesting in this regard is the consideration of Kubeš, who refers to good manners as so-called flexible legal provision that is part of the legal order, because the legal system provides for this provision, but only from a formal point of view, because the judge draws from a different set of norms than the law¹⁴. Namely, the application practice itself has shown that not all cases of the conduct of the entitled subject in the exercise of subjective law contrary to morality can be considered as conduct contrary to good manners. The basic purpose of the order to behave in accordance with good manners is to exclude in the exercise of law a gross violation of morality, ensuring elementary decency in the exercise of subjective rights or compliance with a certain ethical minimum in the exercise of subjective rights¹⁵.

According to the prevailing interpretation, “the exercise of a right contrary to good manners” means that the exercise of a right is in conflict with the recognized opinion of a decisive part of society, which determines generally respected principles of the moral order of a democratic society (i.e. with the principles of decency, honesty, integrity, mutual respect, tolerance, trust, etc.) in mutual relations between people.

In line with social development, good manners to some extent evolve in both temporal and local terms. It is therefore by no means a fixed category, but, on the contrary, subject to historical development. The contradiction with good manners (*contra bono mores*) consists in the fact that the exercise of the law does not contradict the law, but finds itself in conflict with the above-mentioned socially accepted opinion, which determines in mutual relations between people what the content of their negotiations should be in accordance with the general moral principles of society. However, the application of this provision is possible only in exceptional cases, as the application of this basic principle in order to achieve the idea of justice must not, on the other hand, weaken the protection of subjective rights established

12 J. Lazar et al., *Občianske právo hmotné...*, *op. cit.*, p. 21.

13 J. Salač, *Rozpor s dobrý mravy a jehonásledky v civilnímprávu*, Prague 2004, p. 192.

14 V. Kubeš, *Komentář k ust. § 871 ABGB*, (in:) F. Rouček, J. Sedláček (eds.), *Komentář k čl. Obecnému zákoníku občanskému, Díl IV*, Prague 1937, pp. 132–133, cited in P. Dostalík, *Otázka dobrých mravů...*, *op. cit.*, p. 111.

15 H.K. Nippredey, *Kontrahierungszwang und diktierter Vertrag*, Jena 1920, pp. 60–61, cited in H. Barancová et al., *Zákoník práce. Komentár*, Bratislava 2019, p. 63.

by law and thus undesirably undermine the security of employment relationships. The conclusion that the exercise of a right is contrary to good manners must always be based on specific findings in each individual case, and can therefore only be used to exercise pre-existing rights and obligations (It is certainly no longer possible to assume in advance that the beneficiary will perhaps exercise his right in the future in violation of good manners¹⁶).

As the concept of good manners is not defined in legislation and there is no consensus in the theory of law as to its content, caselaw can provide some guidance, but it also differs many times as to the various features of the concept of good manners. According to the Supreme Court of the Slovak Republic, good manners belong to the principles of private law; they are used as a criterion limiting subjective rights in their content, or more often restricting the exercise of subjective rights. And although they are a legal concept and therefore have a normative function, they are not defined by law. Their content lies in the generally valid norms of morality, which there is a general interest in respecting. The assessment of the specific content of the concept of good manners always belongs to the judge on a case-by-case basis¹⁷. According to the Constitutional Court of the Slovak Republic, good manners can be defined as rules of conduct that are largely recognized in society and form the basis of a fundamental value order. If a legal act does not meet this criterion, it is contrary to good manners¹⁸.

In the case law of the Czech courts¹⁹, we can find the definition of good manners as a set of certain ethical and cultural norms of society, some of which are a permanent and unchanging part of human society, others of which, together with society, are subject to development²⁰. According to the case law of the Supreme Court of the Czech Republic, good manners represent a set of ethical, generally maintained and recognized principles, the observance of which is often ensured by legal norms so that every action is in accordance with the general moral principles of a democratic society²¹, or a set of social, cultural and moral norms, which in historical development prove a certain immutability, capture essential historical tendencies, are shared by a decisive part of society and have the nature of basic norms²². Good manners

16 M. Bělina et al., *Zákoník práce. Komentář*, Prague 2008, pp. 56–57.

17 Resolution of the Supreme Court of the Slovak Republic file no. 3 C do 191/1996 of 21st August 1997, R 88/1998.

18 Cf. Resolution of the Constitutional Court of the Slovak Republic IV. ÚS 55/2011–19 of 24th February 2011.

19 See also K. Bubelová, *Dobré mravy v judikatuře Ústavního Soudu ČR*, “Právní fórum” 2010, no. 1, pp. 1–7.

20 Decision of the Regional Court in Brno file no. 15Co 137/1993 of 15th April 1993.

21 Judgment of the Constitutional Court of the Czech Republic II.ÚS 249/97 of 26th February 1998.

22 Judgment of the Supreme Court of the Czech Republic file no. 3 Cdo 69/96 of 26th June 1996, Judgment of the Supreme Court of the Czech Republic file no. 21 Cdo 992/99 of 28th June 2000

allow the court to ease the harshness of the law and give it room to apply the rules of decency²³.

2. The Abuse of Rights

The principle of the non-abuse of subjective rights is also linked to the principle of equity. This is one of the most significant manifestations of equity, which is connected to or intertwines with other specific rules of equity, especially with good manners. The precondition for the exercise of a right, or rather the limit of its exercise, is that the subjective right is exercised in a permitted manner. The exercise of law, as Luby notes, is the realization of the most diverse social preconditions. Therefore, the law cannot establish a single general norm covering all cases and methods of exercising the law²⁴. This is one of the most important reasons why objective law enshrines a general prohibition on the abuse of law, and therefore makes the exercise of subjective rights subject to good manners. The prohibition on the abuse of rights is directly connected with the possibility of the real exercise of rights and obligations on the one hand, and on the other hand with the definition of the degree of social sustainability and the difficult legal admissibility of the realization of those rights, especially to other persons.

While good manners represent a positive limit on the exercise of rights and the obligations arising from employment relationships, the prohibition on the abuse of rights represents its so-called negative border. Although not every behaviour of the entitled entity which is contrary to good manners is also an abuse of rights, it is also true that not every abuse of rights is conduct which is contrary to good manners.

Given its specific construction, primary importance, scope and function throughout private law, the inclusion of the prohibition on the abuse of rights among the principles characterizing and profiling private law is fully justified. The prohibition on the abuse of rights is an important legal means by which the process and methods of exercising subjective rights can be significantly influenced²⁵. This prohibition sets limits on the exercise of subjective rights, especially in cases where they are not clearly and precisely determined by law and, in the event of a conflict of interest between the individual and society, there is a risk that, at the same time, such conduct by the rightsholder could cause harm to other persons or to the public interest. In essence, therefore, it is primarily a matter of limiting such conduct by

and Judgment of the Supreme Court of the Czech Republic file no. 26 Cdo 3195/2008 of 19th September 2009.

23 Cf. Judgment of the Constitutional Court of the Czech Republic I. ÚS 643/04 of 6th September 2005.

24 Š. Luby, *Prevenencia a zodpovednosť v občianskom práve*. 1. diel, Bratislava 1958, p. 327.

25 J. Lazar, *Dobré mravy...*, *op. cit.*, pp. 22–23.

the holder of a subjective right, which is legally permissible and aims at the result pursued by objective law, of the unlawful conduct of the subject and establishing legal consequences for a person exceeding permissible rights in exercising subjective rights²⁶.

The key issue is the criteria by which the necessary limits of the permitted exercise of subjective law are limited. These criteria in general include, in particular, good manners, goodwill, intent to harm, unlawful aims and motives for the enforcement of the law, violation of the balance of interests involved, lack of legally protected interest, etc²⁷.

3. Provisions of Slovak Labor Law

The above-mentioned non-legal criteria are also contained in Slovak labor law, although not always in a satisfactory legislative form and with a proper functional targeting and correct conceptual definition, where the issue of the use of good manners is set relatively broadly in Act No. 311/2001 Coll., The Labor Code as amended (hereafter referred to as the Labor Code).

According to Art. 2 of the Basic Principles of the Labor Code, “The exercise of rights and obligations arising from employment relationships must be in accordance with good manners; no one may abuse these rights and obligations to the detriment of the other party to the employment relationship or co-workers.” This is also repeated in the provision of § 13 para. 3 of the Labor Code. In the case of both provisions, it is a positive order for the exercise of rights and obligations arising from employment relationships, which is in compliance with good manners. On the other hand, the negative limit on the exercise of subjective rights and obligations arising from employment relationships is the prohibition on abusing these rights to the detriment of the other party to the employment relationship or co-employees²⁸. In the case of a legal order to exercise the right in accordance with good manners, such good manners act not only as an interpretive tool, but also as a general limit to the exercise of subjective rights. Not every misapplication of a law that is contrary to good manners is an abuse of the law. In the exercise of rights and obligations, not only what is stated in the law should be taken into account, but also what is considered (albeit

26 J. Lazar et al., *Občianske právo hmotné...*, *op. cit.*, p. 23.

27 J. Lazar, *O základných zásadách slovenského občianskeho zákonníka*, (in:) P. Mach, M. Nemeč, M. Pekarík (eds.), *Ius Romanum Schola Sapientiae. Pocta Petrovi Blahovi k 70. narodeninám*, Trnava 2009, p. 289.

28 H. Barancová et al., *Zákonník práce...*, *op. cit.*, pp. 62–63.

unwritten) to be conduct that is in accordance with good manners²⁹. On the other hand, any abuse of rights is always an act that is contrary to good manners.

Good manners are also subject to other provisions of the Labor Code. The provision of § 15 of the Labor Code contains a rule according to which the expression of will must be interpreted as corresponding to good manners regarding the circumstances in which it was done. According to the provisions of § 47 para. 3(a) of the Labor Code, the employer may not consider it a breach of duty if the employee refuses to perform work or comply with an instruction which is in conflict with generally binding legal regulations or good manners, although the law does not prohibit the employer from imposing it. In addition, the Labor Code links intentional action against good manners to the occurrence of liability for damage and considers them to be one of the prerequisites for the emergence of a liability relationship³⁰.

The subject of a labor law act is contrary to good manners when its content and purpose are in a given place and at a given time, or taking into account the persons of participants or other subjects of employment relations, contrary to generally accepted views on relations between employer and employee, or between other subjects of employment relations, which determines the content of a legal act so as to comply with the basic principles of morality and thus express the principle of the compliance of labor law with the wider social order³¹. Therefore, not all cases of the conduct of the entitled subject in the exercise of subjective law contrary to morality can be considered as conduct contrary to good manners. Good manners in the legal sense of the word serve as the so-called positive limits for the exercise of subjective rights and in the legal literature are referred to as legal morality, which, unlike morality, sets certain minimum moral thresholds for the exercise of subjective rights and has a right as a legal guarantee; the requirements it places on the entitled entity are, in contrast to morality, substantially weakened.

In assessing the validity of a legal act in the alternative, § 39 of Act No. 40/1964 Coll., The Civil Code, as amended, also be considered, according to which “A legal act which, by its content or purpose, contradicts the law or circumvents it, or is contrary to good manners, is invalid.” Proceedings contrary to good manners and the abuse of law are, according to the provisions of the Civil Code on the invalidity of legal

29 J. Toman, *Individuálne pracovné právo. Všeobecné ustanovenia a pracovná zmluva*, Bratislava 2014, p. 62.

30 Cf. § 179 para. 2 of the Labor Code, according to which “An employee is also liable for damage caused by intentional conduct against good manners,” § 186 para. 3 of the Labor Code, according to which “If the damage was caused intentionally, the employer may, in addition to the actual damage, also demand compensation for lost profits if its non-payment would be contrary to good manners” and § 192 para. 1 of the Labor Code, according to which “The employer is liable to the employee for damage caused to the employee by breach of legal obligations or intentional conduct against good manners in the performance of work tasks, or in direct connection with it.”

31 M. Bělina et al., *Pracovní právo*, Prague 2001, p. 101.

acts, affected by the absolute invalidity of a legal act, which the court must take into account even without a proposal.

The prohibition on the abuse of rights and obligations in labor relations is expressly regulated in the Labor Code in two places: firstly, in general as a basic principle of the Labor Code in Art. 2, and secondly, in the amended specific form in § 13 para. 3 to 5, including the regulation of the possibility for the employee concerned to seek redress for the damage caused by abuse of rights and obligations. In both of the cited provisions, the clause prohibiting the abuse of rights and obligations is always preceded by a clause on the conformity of the exercise of these rights and obligations with good manners; it can be concluded that the legislator seems to consider the rules of good manners as a criterion of the abuse of rights and obligations to the detriment of the other party to the employment relationship or co-employees.

The prohibition on the abuse of rights enshrined in Art. 2 of the Basic Principles of the Labor Code represents a legal norm, the violation of which by an authorized subject is an illegal act. The peculiarity of such an unlawful act is that it does not arise in breach of a legal obligation but arises in the exercise of the law in a manner prohibited by law. The provision in question regulates the manner of exercising the right, considering cases where the subject may also exercise the right in an illegal manner, contrary to good manners. The stated peculiarity of an unlawful act during the illegal exercise of subjective rights distinguishes it from other unlawful acts. An unlawful act in the case of the abuse of a right is committed by an authorized subject, which violates a certain obligation imposed by law (prohibition on abuse), but only at the stage of the realization of subjective law. The so-called ordinary illegal act is linked to the content of the subjective right and the abuse of the right is attached to its implementation. Subjective law presents the general model of behaviour of the entitled subject provided by law, the implementation of which takes place in various forms. The abuse of the right is connected only with the realization of the law. It can be understood as the use of specific illegal forms of behaviour of the authorized subject within the legally permitted general type of behaviour³².

The exercise of the right must be exercised within a legal framework which defines its content and purpose. Behaviour leading to a legal result is not an interference without a legal reason in the rights and legitimate interests of another (it is not an abuse of law), even if it is a side effect of property or non-property damage on the part of another party to the legal relationship. Only conduct which is not intended to achieve the purpose and meaning pursued by a rule of law but which is guided by a direct intention to cause damage to another party may be regarded as an abuse of a right. The exercise of a right which does not pursue the objective to be achieved but, on the contrary, pursues harm to another party to the employment relationship is not

32 H. Barancová, *Teoretické problémy pracovného práva*, Plzeň 2013, p. 42.

in fact an “exercise of a right.” It is only an apparent exercise of the right, because it is in fact an abuse of it³³.

Abuse of a right constitutes a certain evil simply because it is unlawful for the entitled person to exercise the right to harm the interests of other persons. Abuse of the exercise of a right can be considered not only such a conduct, the aim of which is not to achieve the purpose and meaning pursued by a legal norm, but also one which is contrary to established good manners conducted with the direct intention to cause harm to another party³⁴. The Labor Code prohibits the abuse of rights not only in relation to the exercise of subjective rights but also in relation to the exercise of legal obligations³⁵. According to the resolution of the Supreme Court of the Slovak Republic file no. 5M Cdo 17/2008 of 13th October 2009, in cases where objective law presupposes that the exercise of a subjective right is formally carried out within the legal limits of that right, but the beneficiary, through its implementation, pursues damage to the other party to the legal relationship, it is the exercise of the law, but the wrong exercise of it. Such a procedure is carried out not for the purpose of achieving results which it has a positive right to protect but only for the purpose of formally complying with the law. Therefore, such an exercise of a right, even if formally in accordance with the law, must be regarded as only an apparent exercise of a right.

Conclusion

If the law must meet the requirement of justice, it must seek ways to correct the excessive harshness that arises in the case of a rigid interpretation of the letter of the law. One of the means of achieving the Roman law idea of equity is precisely the application of good manners, which – like natural law itself – have a normative, corrective and interpretive function. Good manners serve as a criterion that restricts subjective rights in their content, or often as a criterion that limits the exercise of subjective rights. They represent a positive limit to the exercise of rights and obligations arising from employment relationships. The term “good manners” is not defined in law, but we encounter this corrective directly within the basic principles in Art. 2 of the Labor Code. The negative limit on the exercise of subjective rights and obligations arising from employment relationships is the prohibition on abusing these rights to the detriment of the other party to the employment relationship or co-employees.

The content of the term “good manners” lies in generally valid moral norms, or norms of morality, which there is a general interest in respecting. The basic purpose of the order to act in accordance with good manners is to exclude a gross

33 M. Bělina et al., *Zákoník práce...*, *op. cit.*, p. 56.

34 Judgment of the Supreme Court of the Czech Republic file no. 21 Cdo 992/99 of 28th June 2000.

35 H. Barancová et al., *Zákoník práce...*, *op. cit.*, p. 65.

violation of morality in the exercise of law, to ensure basic decency in the exercise of subjective rights, and, respectively, to maintain a certain ethical minimum in the exercise of subjective rights. According to the provisions on the invalidity of legal acts, the subject's conduct contrary to good manners and the abuse of rights is subject to absolute invalidity. The prohibition on the abuse of rights is a legal norm, the violation of which by an authorized subject is an illegal act. Although not every conduct of the entitled entity which is contrary to good morals is also an abuse of the law, it is true that not every abuse of rights is conduct which is contrary to good morals.

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