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# Use of Psychological Examinations of Employees and Job Applicants in Personnel Management

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Additional information is available at the end of the chapter

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## Abstract

This paper deals with psychological and diagnostic examination of the personality of employees and candidates for work, an unexplored subject in the field of labour law and human resource (HR) management in Slovakia. Based on legal analysis of national and international laws and regulations as well as medical knowledge in clinical and occupational psychology, the authors surveyed employers in various industry sectors to test several hypotheses. The results of this study and other empirical data are the foundation for conclusions and the legal basis for drafting a proposal to amend the current legal framework in Slovakia as well as in-house company procedures known as ‘best-practices’.

**Keywords:** psychological examination of employees, recruitment activities, human resource management

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## 1. Introduction

Conceptual management skills and human resource (HR) planning are key elements of personnel management within the legal context of labour law relations, in particular, recruitment activities that result in acquiring certain types of employees who are capable of managing manufacturing, organisational and technical processes [1]. The importance of an effective selection procedure followed by selection of appropriate candidates for job vacancies has been increasing because of the gradually changing nature of manufacturing processes in the context of the fourth industrial revolution [2–18]. Industry 4.0 envisages that even tasks regularly performed in workers’ professions require the use of state-of-art manufacturing technologies that

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cost several thousand to tens of thousands of euros. The new nature of these work positions, therefore, requires that employers fill the vacancies with employees who are more psychologically resilient to work stress, have certain cognitive, psychomotor and behavioural skills and personality features that help them fulfil their work tasks and at the same time prevent possible damage to the manufacturing means and/or reduce complaints from customers, which represent direct employer costs.

The changing nature of work has also had a significant impact on the content of the selection procedure which is no longer purely focused on gathering information on a potential employee, their work background, qualifications, and/or language and other skills [3–21]. In addition to the traditional assessment of physical fitness of an employee, the issue of the psychological capability of a future employee has been more and more part of the medical fitness examination of a candidate, probing their personal characteristics, personality and the presence of possible indicators of psychopathological behaviour.

With insufficient national and international regulation in this area, a conceptual dispute between employers and employee representatives in the Slovak Republic deals with identification of the borderlines at which it is possible to accept such interference in an employee's personal integrity when assessing his/her physical and psychological fitness: when does this have direct relevance in the performance of work and when it must be concluded that an employer did not conform with Slovak laws and possibly infringed on an employee's right to privacy and/or legal provisions related to the collection of employee's personal data that have no relevance to work performance [4, 5]. In practice, the above-described situation also includes, for example, if an employee must undergo a psychological examination when an employer wishes to terminate the employee's contract. These practices can be a certain form of bullying with the aim to exert pressure on an employee so that the employee would terminate employment on his/her own will and the employer might avoid paying compensation in the form of severance pay.

The situations and issues described above have drawn the interest of experts in the area of labour law and HR management, seeking to analyse the current legal status and to identify negative phenomena related to the application of current laws, with the ultimate goal to prepare amendments to the legal framework, including the drafting of new guidelines for its application in practice. These situations constituted the basis for the current research projects focusing on the collection of data to provide the basis for conclusions required for the preparation of *de lege ferenda* proposals as documented in this article.

## **2. Objectives, materials and methodology**

The key objective of the paper is to analyse and compare the current national and international legal frameworks in the field of psychological examination of employees or job candidates and compare these with practical application. Other objectives of the research were to determine whether the examined industry sectors are engaging in psychological examinations and which forms and methods are being used to gather information about individuals,

and/or the approach of an employer to the selection of employees or job candidates who are to be subjects of such examinations. We have applied multiple criteria regarding the subject matter of this paper and the acquired knowledge and its empirical context are the foundation for conclusions and the legal basis for drafting proposals to change the current legal framework as well as company procedures to become 'best practices'.

In drafting the concept of the paper, it was necessary to collect facts and other information from primary and secondary sources. Primary data were acquired from a survey carried out as part of the scientific project sponsored by the Slovak Research and Development Agency (APVV - 15 - 0066): "New technologies in the context of labour law and employee protection". Secondary data were drawn from scientific literature. Because of the nature of the studied issue, the authors opted for a combined methodology (qualitative research methods and the application of selected quantitative approaches). Of the qualitative methods, we used the following: critical in-depth analysis of the current legal framework and scientific cognitive methods.

For the quantitative methods, we used inductive statistics to generalise the primary research results. The selected statistical set was composed of 150 employers of various organisational and legal forms with 110,000 employees, primarily from the manufacturing industry (automotive, electrotechnical and engineering). Most the companies had foreign equity involved. Given these facts as well as the content of the interviews with the representatives of these companies, it is reasonable to assume that a similar approach to psychological examination of employees is taken in the other countries where these companies operate.

### **3. Formal conditions applicable to the selection procedure in the Slovak Republic on gathering information about the health and psychological fitness of employees**

When identifying the legal framework in the selection procedure, Article 2 of the Fundamental Principles of the Labour Code (Act No. 311/2001, the Labour Code, as amended, hereinafter referred to as the 'Labour Code') may be used as the point of departure. Under the Labour Code, an employer has the right to freedom in selection of employees in the number and structure necessary as well as the right to define conditions and how this right is applied [6]. According to Section 41 of the Labour Code, even relations that are formed before the concluding of an employment contract are defined as contractual relations; based on this the employee has the right to fundamental human rights and freedoms, in particular the right to human dignity and protection of privacy and personality. It is required that the principle of equal treatment, and also all provisions of the Labour Code and the Constitution of the Slovak Republic relevant for the protection of the rights of employees, must be complied with.

Also, when organising and managing the selection procedure according to Section 62, paragraph 3 of Act No. 5/2004 on Employment Services, as amended (hereinafter referred to as Act No. 5/2004), an employer cannot require information from an employee during the selection process on his/her nationality, race or ethnicity, political attitudes, membership

in trade unions, religion, sexual orientation or any information that is contrary to accepted principles of morality and personal information that is not needed to fulfil the tasks and duties set by the employer and defined by a special provision. Upon request by an employee, an employer is obliged to document the need for requesting personal information from an employee.

As part of pre-contractual relations pursuant to Section 41 of the Labour Code, both the employer and the individual seeking employment have a certain obligation of information. In their effort to get to know their potential employees as thoroughly as possible, employers do not have the possibility to obtain, for example, referrals from former employers, and/or information concerning the use of narcotic substances, and so on, which could help employers select their employees.

Prior to concluding an employment contract, pursuant to Section 41 paragraph 1 of the Labour Code, an employer is obliged to inform an individual seeking a job about his/her rights and obligations that are subject to the future employment contract and about working and wage conditions under which he/she is to perform the work. An employer may, pursuant to Section 41 paragraph 5 of the Labour Code, require from an individual seeking a job for the first time only such information that is related to the work to be performed by the candidate if he/she is employed by the employer. From an individual previously employed, the employer may demand to submit an employment evaluation and an employment record. However, pursuant to Section 41 paragraph 6 of the Labour Code, an employer may not require information related to pregnancy, family situation, personal integrity, political affiliation, trade union membership or religious beliefs.

In general, based on the review of laws and regulations and practical experience from other European Union (EU) member states, the set of information could be outlined [7] of the types of information that an employer may be entitled to require from a job candidate, such as the ability to perform the offered job, work and professional background, courses attended, certificates obtained, logical skills, and the ability to manage stressful situations.

In **Czech Republic**, a new Specific Medical Services Act (Act No. 373/2011 Coll.) became effective. This act contains a new regulation on medical examinations of employees and stipulates the rights and obligations of employers and employees. The most significant changes in this field are a new legal fiction that a person who did not undergo an initial medical examination is deemed unfit for employment and a new legal fiction that a person without a valid medical examination is deemed unfit for employment. Each employee had to undergo an initial medical examination. The amendment introduces an exception that an initial medical examination is necessary in case of agreement on the performance of work or agreement on working activity only if the future employee shall perform hazardous jobs (as defined in legal regulations governing public health protection) or if the future employer expresses concern over the employee's state of health. The initial medical examination is performed prior to entering into an employment contract and takes at least 40 min (60 min in case of hazardous jobs). Upon this medical examination, the medical doctor issues a medical assessment by which the parties are bound, but may file an appeal.



The Act on Facilitating Business Activity **in Poland** is designed to simplify business operations and extends to such areas as employment law, modifying the rules for medical screening examinations of staff. Art. 229 of the Labour Code currently requires a preliminary medical examination, before beginning work, of persons newly hired, youth employees transferred to another position, and other employees transferred to a new position that involves health risks or difficult conditions. The amending act provides for a new exception of convenience to both employers and employees. There will be an exemption from the requirement for a medical screening examination also for persons hired by a new employer within 30 days after termination or expiration of a prior employment relationship, if they present to the new employer an up-to-date medical certificate confirming that there are no contraindications to working under the conditions described in the referral for a medical examination, and the new employer confirms that the conditions correspond to the working conditions at the new position.

In **Hungary**, based on 33/1998 on medical examination concerning suitability for sphere of activity, profession, and in regard to personal hygiene, the medical examination required for the position can be preliminary: periodical and extraordinary. Preliminary medical examination concerning suitability for sphere of activity shall be performed prior to the beginning of the working process: before the change of the position, the work place or the work environment. Periodical medical examination is required on an annual basis, for example, for the employee who is employed in a position, where risks of accidents are highly increased, the frequency of periodical medical examination is regulated by the decree. Extraordinary medical examination concerning suitability for sphere of activity shall be provided in the cases, for example, for the employee's health condition highly changed, which may make him/her unable to hold the position complying with occupational safety and occupational health requirements [8].

#### **4. Psychological dimension of HR management in light of these issues**

The use of psychological examination methods in HR management, especially in the context of the selection procedure, has become part and parcel of the modern concept of human resources. Professional use of psychological examination methods makes it possible for an employer to acquire information about personality features of candidates and/or employees, their personal characteristics, prerequisites and certain capabilities. These methods enable employers to assess the position and function that a candidate is most fit for, it helps them discover the candidate's growth potential and his/her strengths and weaknesses.

The first records about the selection of workers go back to the times of Ancient Rome when the Roman army selected their recruits—not only soldiers but also medics, explorers, carpenters, veterinarians and others. The ancient Roman army was highly demanding of its soldiers—despite the high pay it was a problem to recruit people fit for the job since the work of a soldier was also very risky. Therefore, recruiting agents travelled around the whole Roman Empire seeking suitable candidates.

An increased need to find fit, specialised workers emerged after the industrial revolution. The recruitment procedure started with a simple notification that, for example, a manufacturing plant had vacant posts and people could then simply apply for a job with that plant. The beginning of the use of psychological examination in the selection procedure dates back to 1901. The expansion of industry and the related demand for a great number of workers resulted in the need to look for quality employees to fill leading positions. For this purpose, psychological tests started to be used in practice. World War I had the most significant influence in the boom of intelligence testing (Army Alpha and Army Beta tests); an enormous number of military recruits had to undergo these tests. After successful use of psychological examinations during the war, this kind of testing started to expand in other areas. A more general interest in the tests occurred again before the beginning of World War II. Army psychologists were developing tests for various specialists. After the war, job agencies were established, offering work to job seekers.

Nowadays, the selection procedure focuses more on the selection of a candidate for a specific position in a company. An important change in the process of seeking and selecting employees was brought about by the Internet. The first round of job seeking and employee selection is currently done via the Internet.

The breaking point for the necessity to use psychological knowledge may be regarded as the period of the organisation of work initiated by the efforts of F.W. Taylor and F.B. Gilbreth to maximise the organisation, performance and rationalisation of work. Despite the fact that F.W. Taylor was vehemently refusing to accept social aspects of work and insisted on an individualistic approach, many of his processes and methods (e.g. timing of individual work operations, exact definition of workplace movements, breaks, etc.) meant a turning point in the development of work psychology [9]. Work psychology as an independent applied discipline dates back to the period after World War I. This discipline emerged under the direct influence of the specific needs of society. The publication of 'Psychology and economic life' by Münsterberg (1912) [23] was a pre-text to it. In this publication, the term 'psychological technique' was used for the first time ever and became a synonym for the first stage of the development of work psychology. The beginnings of psychological techniques are related to the development of psychological examination and diagnostics and, in particular, IQ tests. The term 'psychological technique' was defined by W. Stern, who originally meant the psychology of treating a person in search of an optimum between the means and intention, which differs from 'psychological examination' as a discipline of psychology in understanding a human being. Methods of psychological examination emerged to assess the characteristics of an individual and assist with the selection of a specific profession. It was based on a premise that problematic issues at work are caused by the fact that job positions are filled with individuals lacking the corresponding prerequisites. Recruiters focused their interest on finding differences between individuals and assessing how competent these individuals were to fill a specific job position. It was almost exclusively focused on the psychological selection of employees and professional counselling (a subjective psychological technique) and also, to a lesser extent, on the adaptation of working conditions (an objective psychological technique) [10].

Nowadays, the selection of suitable employees is important for companies primarily because of the financial aspect—an employee who is very productive may receive double the salary of an average or less efficient colleague; however, his/her performance is usually much more beneficial for the company than it might appear when looking at the salary difference between these two employees. It means that a smaller number of high-quality employees are of greater value for a company than a larger number of average or very mediocre workers. Today, various psychological methods are used by psychologists in an attempt to find out if a candidate is capable of meeting relevant requirements of a job position; it means that the prerequisites and potential of a candidate are measured. In this respect, we consider the application of work psychology and occupational psychology as key, as these are specialised and particularly practice-oriented disciplines that explore the principles of psychological regulation of work-related activities and how these principles could be used for the benefit of society [11].

To be able to select employees, it is necessary to determine their personal characteristics, competencies and skills that are most suitable for a specific job position and what it requires. As for their purpose, work psychology methods may be divided into research methods and intervention methods. Even though it is possible to determine the individual types of methods which fall under these categories, their exact division is not as straightforward as science would ideally assume. For example, an interview as a method may be both a research and an intervention method. Psychological methods are therefore divided per various criteria. The following types are most frequent [12]:

1. **Clinical methods:** observation, interview, personal history and analysis of spontaneous responses;
2. **Testing methods:**
  - performance methods: IQ tests, tests of special skills and individual psychological functions (memory, creativity, technical, verbal, mathematics and art skills) and knowledge tests;
  - personality tests: projective tests, objective personality tests, questionnaires, evaluation scales;
3. **Machine-assisted methods.**

Despite this division of psychological evaluation methods, it is necessary to emphasise that, 'In principle, any method of psychological evaluation offers certain information that goes beyond the frame of its defined validity, for example, in addition to qualitative analysis of an observed behaviour of a respondent, IQ tests provide us with a fundamental outline of his/her personality' [13]. Interview is the most frequently used method all over the world. IQ tests and personality tests are also widely used.

Intellect means an ability that has an impact on and is a prerequisite for whether a person is capable of dealing with various situations: '...it is the ability of an individual to learn and be able to find direction in a new situation regardless of previous experience' [14]. When using an IQ test, it is therefore possible to predict work performance of a person. The more



demanding the work is, the more it requires a certain degree of independent decision-making and responsibility, and the more important it is to know the IQ score of a candidate for such a job position. It is also important to know that these types of tests may be applied successfully only if the individual is collaborating. If a person who is subject to the test does not collaborate, the test results do not reflect an objective level of the person's skills. In addition to this, the test results may be biased due to the current health condition and/or emotional state of a respondent, or due to other test situations (sex and age of the testing and the tested person, their mutual sympathies, the first impression, etc.). These test results are usually presented as the well-known intelligence quotient—IQ. The average IQ score in the population is 100, with a standard deviation of 15 points (the intellectual capacity of the majority of the population is between 85 and 115 points). IQ tests are further divided into verbal tests (knowledge acquired through learning), performance tests (inborn potential not influenced by learning) and comprehensive tests. The following tests are currently used the most: Wechsler Adults Intelligence Scales (WAIS-III), Raven Progressive Matrices and IQ Structure Test (IST).

It is only natural that the work performance of a person is also influenced by his/her personal characteristics. Personality tests are used in order to learn about the personal characteristics of a person and/or changes in their personality when subjected to various factors (e.g. extreme load, disease, injury, etc.). These tests are based on different concepts than performance tests. It is not performance that is measured; therefore, there are no 'correct' or 'incorrect' answers. The goal of these tests and examinations is to differentiate between individuals with different personality characteristics (e.g. introvert vs. extrovert, dynamic vs. passive, ability to lead a group or adapt to a group, and other characteristics), interests, attitudes and/or different clinical symptomatology (symptoms of mental disorders). When assessing psychological competencies of a person for the purposes of HR management, personality questionnaires and projective techniques are most relevant.

**Personality questionnaires** are based on a subjective deposition of a respondent about his/her personality characteristics, how he/she responds to various situations, what his/her opinions are, and so on. They rely on introspection (conceptions about oneself) because the answers of an individual depend on their inner observations (to what extent is a respondent able to make appropriate assessments of oneself). This is the reason why one of the most frequent criticisms of personality questionnaires is a reservation that they do not assess what a respondent is like but rather how they see themselves and what they wish to be like. Another disadvantage of these questionnaires is that the results may be intentionally biased. Many questionnaires attempt to control such possible intentions by engaging the so-called 'lie scales'. Individual items in these lie scales focus on minor human 'sins' that are considered negative, but on the other hand, they are committed by most people (e.g. the statement: 'At home, I always eat with the same good manners as eating at a social event'). As part of the modern selection procedure, mainly when selecting candidates for managing positions or mentally demanding conditions, the so-called stress-test of cognitive processes regulation is used. Its purpose is to assess mental stress resistance levels. The most frequently used questionnaires are NEO—Five Factor Personality Inventory; MMPI—Minnesota Multiphasic Personality Inventory; the Stroop Test; BIP—Business-Focused Inventory of Personality; and others.

**Projective methods** employ indefinite and relatively unstructured stimuli. One may respond to such ambiguous stimuli in multiple ways, which creates room for projections. It is assumed that while processing and responding to multivalent stimuli, respondents project some parts of themselves into them, such as their perceptions, expectations, longings, despairs, complexes, moods and so forth. Such response may, therefore, provide information on personal characteristics of an individual. An advantage of the projective method is that it allows for a minimum (typically none at all) intentional influence over the results since the scrutinised person has no clue as to the purpose of the method. Moreover, the application (test procedure) of projective methods does not mimic an examination in its nature, thus it appeals to most respondents. However, the application of projective methods by non-psychologists or psychologists without adequate training (for this purpose, a single university study programme of psychology is considered adequate training), possibly their application by psychologists who failed to undergo training courses on particular projective methods or those who lack experience in applying a particular projective method under satisfactory supervision, may pose a risk. Projective tests include the Rorschach test ROR, Hand test, Draw-A-Person test, Thematic Apperception test (TAT), Tree-drawing test and Lüscher Color test.

There are a great number of theories about personality and personality characteristics. Based on extensive research, five basic characteristics have been determined as a result of an independent factor analysis by which every human being can be described. Currently, the most widely used is the five-factor model of personality called the 'Big Five'. Based on this model, there are five dimensions of personality:

- **Openness** to experience—intellect;
- **Conscientiousness**;
- **Extraversion**;
- **Agreeableness**;
- **Neuroticism**—emotional stability.

Intelligence and some dimensions of personality are interconnected, but some are not. Based on this model, we propose the following:

Neuroticism—the higher it is, the lower the person's results in IQ testing is—his/her anxiety jeopardises his/her performance under stress;

Extraversion—a person with high level of extraversion can better cope with intrusions from the surrounding environment; he/she has a better short-term memory; on the other hand, introversion is intertwined with good long-term memory and long attention span;

Openness to experience—best correlates with intelligence; curious people seek more answers, do more research and these activities are backed up by abundance of knowledge, which is directly linked with the degree of intelligence;

Agreeability—fails to correlate with intelligence;

Conscientiousness—negatively correlates with congenital intellect, which means that people with lower level of intellect tend to be more systematic and persistent in order to leverage their insufficiencies; on the other hand, more intelligent people regard their intellect as sufficient and therefore feel no need for advancing their systematic qualities.

Psychological examination is a very complex process; therefore, the application of testing methods without mastering the theoretical background, and/or the mechanical interpretation of these methods without verification of hypotheses implied by the tests, and without the back-up of clinical methods (observation, interview, information from the applicant and his/her surrounding) may not be objective and may not give a clear answer whether a candidate for work is or is not suitable for the job [15].

## 5. Examination of medical fitness during the selection procedure according to special regulations

An employer may, pursuant to Section 41 paragraph 2 of the Labour Code, demand information concerning a future employee's health or psychological fitness and/or another condition necessary for determining the future employee's ability to perform work, but only if such capability for work performance is required by a special regulation. The intention of **health evaluation of an employee as well as his/her psychological capability** is that **an employer has proof that the employee is competent to perform the agreed work** and to ascertain that during the performance of agreed work the employee's **life and health will not be threatened**. The evaluation of an employee's health condition is important in labour law relations, although it is a very sensitive area and affects an employee's personal integrity. It is also part of the personal data of an employee or a candidate. Information on the health condition of an employee may be processed only by a person authorised to doing so according to special regulations (e.g. the Act on Health Care). For the purposes of selecting a suitable candidate, an employer may process only information **whether the candidate is competent or incompetent to perform the work required by the specific work position**.

As for health-care assessment, according to the Act on Public Health (special Act No. 355/2007 on Support, Protection and Development of Public Health) and further to the duties of an employer defined in Section 30 item 1b and c of the Act (the duty of an employer to provide for medical supervision and evaluation of medical fitness for work), the nature and content of medical examination of a candidate for work and/or an employee are stipulated by the Journal of the Ministry of Health of the Slovak Republic (MH SR Journal), items 1 through 10 of 29 January 2014. The Journal determines mainly the type and timing of preventive medical check-ups in connection to work factors and the work environment or more specifically to work positions for which a medical fitness examination is required according to special regulations. **Preventive medical check-ups aimed at the evaluation of medical fitness prior to the conclusion of a labour law relation** or similar labour relation of a job seeker focus on the discovery of the already developed pathological conditions, and also clinically asymptomatic but already detectable risk indicators for an occupational disease or illness related to work.

Finally, the aim of these examinations is to trace a disease that could later contraindicate the candidate's work performance. **Work-related preventive medical check-ups** typically apply to persons whose work positions are ranked as third or fourth category; persons whose jobs are ranked as the first or second category need to undergo work-related preventive medical check-ups only if a specific regulation requires so, or if an employee requests a preventive medical examination. **A periodic work-related preventive medical check-up** takes place biannually for work positions ranked as the third category and annually for work positions ranked as fourth category. Periodic preventive medical check-ups of persons performing work belonging to the first or second category are conducted only if a special regulation so requires at intervals stipulated in the regulation. A preventive medical check-up prior to a change in work position must, always, take place before the actual change occurs.

Examinations that are part of work-related preventive medical check-ups can be divided into **basic examinations** forming an inseparable part of each work-related preventive medical check-up in the extent stipulated for individual factors, groups of factors or performed activity (see MH SR Journal, Volumes 2–6) and **complementary examinations** performed in justified cases (see MH SR Journal Volumes 2–6). These are indicated by the physician performing work-related preventive check-up on an individual basis; they are warranted by identified and assessed health risks, labour factors or the occupational environment, work performed, potential occupational health hazards, or if it is necessary to conduct them in order to exclude contraindications. Work-related preventive medical check-ups, which are part of health supervision in the area of occupational health, are performed by qualified occupational physicians and physicians qualified as general practitioners working outside occupational health services [16].

Subsequently, it is important to pay special attention to psychological examination while differentiating whether it is part of health fitness assessment and a prerequisite for work performance (e.g. soldiers, police officers, judges and certain railway employees) or whether it is a psychological examination which goes beyond legal requirements and is, in fact, a requirement set (unilaterally) by an employer, unsupported by applicable laws and regulations (e.g. examining various skills of managing employees). In this respect, even the person performing these examinations may differ, that is, it may be a physician performing clinical psychology as a medical field or an occupational psychologist.

With regard to personal data protection in the context of psychological evaluation of a candidate's psychological capability, specific cases must be explored and whether in specific cases an obligation imposed by an employer is part of the basic or complementary **examination** within a preventive medical check-up conducted **in relation to work and with regard to the work and environment factors or the type of work performed by the employee**. This means whether an employee should undergo such examination at all (e.g. assessment of his/her psychological capability for the performance of work). If the MH SR Journal stipulates that medical examinations include, for example, a psychological examination for a specific type of work, which is part of the basic or complementary examination for the assessment of medical fitness, it is then an employee's or a candidate's obligation to undergo such examination as there is legal base for the processing of personal data due to a special regulation (Act on Public Health, Journal of the Ministry of Health). If a psychological examination is only



part of a complementary examination, it is necessary to explore the reasons for request of such examination on the part of the physician who performed the preventive medical check-up in relation to the person's work, and with regard to issues related to material grounds for performing a complementary examination. **Psychological examinations that are part of health condition assessment** of employees or candidates for work are demanded within a basic examination for work that includes, for example, driving motor vehicles, and within a complementary examination with, for example, work that includes maintenance of boilers of I. through to V. categories, or maintenance of small motor vehicles.

If any part of the procedure described above for the implementation of a psychological examination of an employee as part of assessment of his/her health condition in relation to work performance is not observed, it is not possible to justify the requirement for a psychological examination based on the application of a special regulation, and such action on the part of an employer would be in direct contradiction of labour law provisions. Similarly, such procedure would be in contradiction of the Act on Personal Data Protection, since in this case the employer may only acquire personal data to an extent and in the manner prescribed in a special regulation.

When the psychological examination is part of a medical examination pursuant to relevant provisions of a special regulation, the manner of execution of the psychological assessment is at the discretion of the physician who performs the psychological examination (as a rule, it would be a clinical psychologist requested by the employee's general practitioner (GP); an occupational psychologist is rather an exception). The issue of the form and type of the examination (e.g. which psychological test is best in order to gather all the necessary information for an employer even beyond the facts that are to be acquired pursuant to a special legal provision) is exclusively subject to the decision of the GP and shall not be influenced by the demands of the employer or the employee. The primary responsibility is therefore borne by the GP while his/her decisions are subject to scrutiny according to a special regulation as part of *lege artis* scrutiny of provision of the health care.

## **6. Examination of medical fitness during the selection procedure upon the decision of an employer**

More frequently scrutinised cases of medical fitness examination of job candidates are those in which no specific requirements about a candidate are laid down in a special legal provision, or there are no special legal provisions regulating the work performance of the candidate's job position. In practice, there are disputable situations related to medical fitness examinations when the concerned employees that are subject to medical fitness examination are not covered by the above-described special regulation, and it is this fact that is similar to the issue of the physical fitness of an employee. An employer shall not assign work performance to an employee who is not medically fit to perform the work [17].

At present, some employers demand various psychological tests or examinations as part of their selection procedure. The question arises whether an employer may demand that a candidate take a psychological test or examination unless it is prescribed in a special regulation



and, at the same time, whether an employer may define the form of such psychological examination of a candidate or an employee when the employer wishes to gain information about the reactions, behaviour and mental state of candidates or employees to be able to make a better decision with regard to the filling of a work position. Given that imposing duties on employees must be within the limitations of and based on the law, and that the Labour Code provisions may be considered cogent standards that cannot be departed from, it can be concluded that an employer **does not have such authorisation**. When imposing duties, an employer is also bound by the type and location of work performance of an employee, and/or agreed work conditions.

In this regard, it is necessary to differentiate whether the aim of a psychological assessment carried out by means of psychological examination methods is to understand characteristic features of an employee or to examine the core of his/her personality – which can be done only if required by special legal provisions. It is therefore questionable whether an employer may examine the above-mentioned personality traits and/or whether such examination would not already constitute interference with the personal integrity of an employee executed without his/her consent. With the lack of special regulation in this area, the fundamental principle of private law in which ‘everything that is not forbidden is permitted’ cannot be taken as the baseline for permitting psychological examinations without any limitations exclusively at the discretion of an employer. It is our belief that a benevolent attitude to psychological examination of candidates for work and employees causes unacceptable interference with the balance of rights and obligations for both parties and leads to the occurrence of negative phenomena which have been confirmed also by the conclusions of the conducted research. To the contrary, the authors believe that it is essential to apply the principle that the assignment of duties to employees shall be done **only on the grounds of law, within its boundaries and while observing fundamental rights and freedoms**.

When attempting to determine the right of an employer to demand a certain psychological capability of employees and therefore demand that they undergo a psychological examination, it can be argued that the Labour Code stipulates that employers, in line with specific conditions of their work, can define their employees’ **requirements for proper performance of work**. An employer must proceed in line with the **proportionality principle** and define requirements in such a manner that they are **justifiable and legitimate for a specific type of work**. However, we believe that for certain types of work it should be possible to request special capabilities, including the requirements for a certain psychological capability provided this **special capability is necessary for and directly linked to the kind of work and activities performed as part of this specific type of work**. Thus, an employer’s **across-the-board instruction for employees to undergo psychological examination**, regardless of the type of work or specific tasks to be performed, can be considered **inappropriate and non-justifiable**.

Given the lack of specific regulation on the examination of psychological capabilities of employees, one must be aware that the exercise of establishing the legal basis for conducting a psychological examination must be carried out in the context of two, independent legal modes, and that these modes partially contradict themselves within the legal order of the Slovak Republic. The Labour Code, on one hand, stipulates that an employer may establish

a psychological capability examination as a prerequisite for the performance of work and in order to secure legal certainty **ask for consent of all employees with such assessment conducted by means of a psychological capability examination**. If an employer does not have the consent of an employee to a psychological examination, the employer's **authorisation to unilaterally demand that an employee take a psychological examination** would be associated with a serious risk that such action would be evaluated as not being compliant with the law.

On the other hand, when looking at the issue in the light of the Act on the Protection of Personal Data, an employer may process personal data only at a scale pursuant to special legal provisions, and in only exceptional situations may the employer link such collection of information to an employee's consent. However, in such a case, the assessment of psychological capability would mean such a serious violation of the fundamental human rights and freedoms of an employee (in particular, the right to privacy and family life) that it should not be bound to the employee's consent to undergo a psychological examination. From the viewpoint of the Act on Protection of Personal Data, if the execution of a psychological examination of an employee cannot be legally based on any special regulation, an employer cannot carry out such psychological examination.

## 7. Practical application and conclusions

Our scientific survey points to several problematic issues in practice related to the execution of psychological examination during the selection procedure and within labour law relations. Therefore, we need to apply several criteria to the explored matter. The main goal of the survey was to identify the current state of play regarding the use of psychological examination methods primarily in selection procedures conducted by employers; our interest area was later extended to current employees of the employers in the selected sample. The survey also focused on the types of psychological examination methods used. The aim was to confirm the set hypotheses that were formulated based on prior experience of the authors. Various viewpoints were applied to the evaluation of the gathered survey material. Procedures taken by employers in relation to the collection of personal data of employees by means of psychological examination of their capabilities were explored as well as compliance of these procedures with the laws of the Slovak Republic. The application of psychological tests itself was evaluated by an independent psychologist, employing as a criterion the premise that the BIP personality test led to lesser interference with privacy (mainly in terms of personal data acquisition about the personality traits of candidates and employees that are not work-performance related) than the more popular and widely used 16 PF test.

The examined selected sample confirmed that psychological and diagnostic examination of employees' personality is carried out by approximately 60% of employers (90 employers), and a great majority of them (70%) use the 16PF personality test. When attempting to confirm our hypotheses, the primary emphasis was not to perform quantitative research but rather to

identify the current status quo and determine the trends in practice so that we would be able to formulate conclusions in terms of *de lege ferenda*.

### 7.1. Hypotheses, their verification and justification

Hypothesis 1: *There is a trend among employers to demand psychological examination across-the-board from candidates and employees when filling work positions regardless of the fact that the job descriptions and work assignments for these work positions do, in fact, differ.*

When exploring and verifying this hypothesis, we concluded that this was confirmed and the reasons for this confirmation can be found in the organisational structure of employers. The organisational structure defined basic categories of employees regardless of the nature of the performed work (there was differentiation of employees to production and non-production categories) and certain subcategories depending on the duration of employment with the employer. However, formally we were seeing the same level (type) of employees within the same line of the organisational structure. For example, some work posts with different work performed were marked as 'desk officer-operator' but only one of the employees who was marked as 'operator' performed the actual work that required the operation of state-of-the-art technology for which the requirement for a higher (certain) level of psychological capability could be objectively justified.

With all other operators, psychological examination was carried out 'as if' just to make sure, for example, if there was a need for replacement of the operator, the employer would be able to secure continuity of the manufacturing process. In the real world, though, such a replacement was used very rarely since in case of a need to replace such an operator employers used operators from other work shifts, which means that there was no use of other employees as replacement operators and there was no objective reason to use them because of the sufficient number of shift employees. However, employers had at their disposal a whole pack of information resulting from psychological examination of employees. These data were of a personal nature, concerning medical fitness, but the nature of these data was in no way related to the performed work of employees or the work to be performed by candidates (this kind of psychological examination was applied also to the assessment of job candidates). At the same time, employers did not have the consent of employees to such psychological examination since they had set as a prerequisite a certain level of psychological capability which, however, was not specifically defined by in-house company regulations.

Hypothesis 2: *As part of psychological examination, most employers tend to use tests that are intended to result in a greater scale of information about respondents' personal characteristics (16 PF test instead of the BIP test) than would be required by the nature of work.*

Based on prior empirical experience, a hypothesis was formulated, which was to verify whether employers tend to use contractual physicians to help them pick such forms of psychological examination of employees, the aim of which is not only to ascertain an employee's capability to perform certain work but also to acquire other types of information on a person that could help the employer better decide on a candidate for a specific work position.

Verification of the hypothesis was based on a qualified assessment of tests that were used as part of psychological examination, pen and paper interviews with employees, and on the information that was provided to physicians during psychological examination. Similarly, pen and paper interviews were conducted with the psychologists in order to find out what the reasons were for having conducted the same type of interviews with employees.

The most frequent indications concerned IQ and personality tests of candidates for work or employees. Often, physicians (clinical psychologists) specified the purpose of an examination (e.g. a personality test with the focus on emotional disorders, tendencies to simulation or aggravation, etc.). As part of psychological examination, special methods were used with the aim to acquire information on a respondent that is valuable from the diagnostic point of view; both types of psychological examination methods were used (clinical methods and tests).

The majority of psychological examinations applied personality testing as the method for job candidates (these were also used with employees). These had general orientation without a direct relation to the nature of the work performed or to be performed and their aim was solely to determine a personality profile. Personality questionnaires, completed by respondents, and projective methods that were used with selected categories of employees (these were used most of the time when filling positions for higher management) were used to get a broad scope of information for an employer about the person's personality. Quite a high number of these tests were not related to the performed work; they just provided employers with information on personal characteristics of candidates. The studied sample confirmed quite extensive use of the standard personality test 16 PF, which from the viewpoint of labour law and with regard to the authorisation of an employer to collect such a broad spectrum of information means serious interference with an employee's privacy despite the fact that it is a very popular test in HR management (the test should be conducted by a clinical psychologist with appropriate certification, which is not the case with the majority of those sampled, and it is questionable whether the 16 PF test employing the current standardised norms is being used in order to produce reliable results). We consider the acquiring of information about emotional stability, firmness of attitudes, introvertedness or communicativeness as verifiable interference with the personality of job candidates that an employer does not have the right to exercise unless the job applicant had given prior consent pursuant to the Labour Code. Pursuant to the Act on the Protection of Personal Data and in terms of what was presented above, these actions were clearly on the contrary to the laws of the Slovak Republic. The use of the BIP test was less frequent, even though in the context of privacy protection of employees it is easier to determine the relevance of the test to the nature of the work to be performed by the job candidate or the employee, and/or the performed work in general. In terms of the nature of the acquired information, such as the respondent's conscientiousness, flexibility or confidence, the use of the BIP test can be considered more legally conforming.

The use of stress-management tests was documented to a smaller scale (only the SVF 78 test was identified) especially in light of the fact that these types of tests were used only with regard to filling higher management positions where stressful situations are more likely to occur in greater numbers.



## 8. Conclusions and recommendations

The above-described state in the relevant national and international labour law provisions as well as the results of the conducted scientific research has led us to the conclusion that there is a need to adopt legislative amendments to laws regulating employee selection and hiring procedures, especially covering the area of medical fitness examination of job candidates and employees conducted by employers [19, 20]. Against these deliberations and efforts of, mainly, employee representatives stand the large, above all, multinational employers whose interest is to adapt formal selection procedure conditions to their internal, specific rules which often differ significantly from the general ones, and their intention is to acquire from potential employees as much information as possible that might help them decide about employment of a candidate. Regardless of the above-described two parties of interest, and with an attempt to review the issue in an objective manner, we do believe that this review has demonstrated the necessity to define minimum legal criteria (procedural and material) for the process of psychological examination of job candidates and/or employees (also during employment) so that there are clear limitations set to an employer's interference with the employee's personality and his/her fundamental human right to privacy and family life [22].

What may be considered as recommendations are to define: who would be authorised to assess psychological capabilities, the types of admissible personality tests and projective methods with regard to the nature of work performance, and the obligation of an employer to always obtain consent from an employee for a psychological examination (with a prior obligation to provide information about the content and course of the examination, specifying the information that the employer is to learn about the employee's personality traits). In this respect and given the growing number of multinational companies and the universal nature of fundamental human rights and freedoms, we see room for professional international discussion of experts examining the possibility of adopting a common European (multinational) regulation.

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