

STUDY

TERMINATION OF EMPLOYMENT RELATIONS: LEGAL SITUATION IN LATVIA

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1. INTRODUCTION

The purpose of the Study. The purpose of the Study is to present an overview describing the legal situation in Latvia in the field of termination of employment relations.

Codified legal system

Latvia, as a country belonging to the Roman-German circle of legal systems, has codifications in several areas of law (e.g. civil law, commercial law, criminal law). The area of legal employment relations in Latvia is no exception and a codified Labour Law is the main legal act including legal regulation concerning this field. The Labour Law has been scrutinised to comply with *acquis communautaire* during Latvia's accession process to the European Union. It is therefore true that there are no fundamental differences in Latvian employment law if compared to the general principles and regulations of employment law prevailing in the European Community. Nevertheless, given that the matter of termination procedures of employment relations is not regulated in detail by the European Union law, Latvia certainly has its own specifics and peculiarities in the regulatory sphere under review for the purposes of this Study.

Detailed regulation concerning termination of employment relations

In line with overall practice in the countries of Continental Europe, Latvian Labour Law includes quite sophisticated regulation regarding employment relations and the possibilities of termination. As a general rule, unilateral termination of an employment agreement may legally occur only in cases specified by the law. In a majority of occasions the employer is also under statutory duty to obtain prior consent from the relevant labour union in case of dismissal on the initiative of the employer (if the relevant employee is a labour union member). Collective dismissals are regulated still in greater detail.

2. SOURCES OF LAW

2.1. Constitutional status of the rules on the right to work

The Constitutional rights related to the right to work are provided for in the following articles of the Latvian Constitution (named 'Satversme' in the Latvian language).

Latvian Constitution Article 106 – employment freedom principle

Article 106 of the Latvian Constitution reads: ‘Everyone has the right to freely choose their employment and workplace according to their abilities and qualifications. Forced labour is prohibited. Participation in the relief of disasters and their effects, and work pursuant to a court order shall not be deemed forced labour.’

When commenting on this article, the Constitutional Court of the Republic of Latvia has pointed out in its judgment¹ that pursuant to this article the individual has the freedom to choose employment, but it is no guarantee for employment. The freedom to choose employment is closely connected with the abilities and qualifications of the person. In another judgement² the Constitutional Court of the Republic of Latvia has emphasized that the right to freely choose the employment also includes the right to retain the current employment position of the person. This constitutional right is introduced to protect the person against the actions of the state if it inadequately intervenes in the operational scope of this principle. Although it was not expressly noted by the Constitutional Court in the particular case, it may be further commented that the constitutional right to retain the current employment position protects the person against unfair dismissal practices.

Latvian Constitution Article 107 – constitutional right to adequate remuneration

Article 107 of the Latvian Constitution reads: ‘Every employed person has the right to receive, for work done, commensurate remuneration which shall not be less than the minimum wage established by the State, and has the right to weekly holidays and a paid annual vacation.’

The Constitutional Court has quoted this article in a matter concerning remuneration of imprisoned persons for the work they perform³. The article has been addressed also in a matter relating to the right of a municipality to pass local regulations concerning due management and cleaning of public territories connected to private property objects⁴ and a few other cases.

Concerning the termination of employment subject it may be noted that the quoted Article enshrines the entitlement of employees to due payment of severance pay in case

¹ Republic of Latvia Constitutional Court Ruling of 4 June 2002, case No.2001-16-01.

² Republic of Latvia Constitutional Court Ruling of 23 April 2003, case No.2002-20-0103.

³ Republic of Latvia Constitutional Court Ruling of 21 November 2005, case No.2005-03-0306.

⁴ Republic of Latvia Constitutional Court Ruling of 21 May 2004, case No.2003-23-01.

of terminating employment relations, as it is provided by law and/or collective or individual employment agreements. At the time of terminating employment relations the person is also entitled to receive adequately calculated compensation for unused days of vacation (if any).

Latvian Constitution Article 109 – rights to social security

Article 109 of the Constitution reads: ‘Everyone has the right to social security in old age, for work disability, for unemployment and in other cases as provided by law.’

The Constitutional Court has addressed this article in a case relating to the rights of retired persons to retirement pay despite the persons continuing remunerated employment relations⁵ and in some other cases⁶.

Nevertheless, the Constitutional Court has not up to date tried a case in Latvia relating to validity of a legal norm concerning termination of employment relations. This indirectly suggests that the overall regulation in Latvia in the field of employment relations termination currently survives the constitutional acceptability criterion.

2.2. International agreements and conventions

Prevailing effect of international legal norms

The Labour Law contains a chapter titled ‘International Labour Rights’, which specifies that in the event of a conflict between the provisions of the Labour Law and international legal rights, international legal provisions must be applied⁷. Furthermore, this chapter describes possible options concerning laws applicable to employment relations⁸, and defines and regulates the appointment of an employee to work in another country.

⁵ Republic of Latvia Constitutional Court Ruling of 19 March 2002, case No.2001-12-01.

⁶ For instance, Republic of Latvia Constitutional of Court Ruling 6 April 2005, case No. 2004-21-01.

⁷ Labour Law Section 12 (International Agreements) provides: ‘If an international agreement, which has been ratified by the Saeima, sets out provisions that differ from those contained in this Law, the provisions of the international agreement shall be applied.’

⁸ Labour Law Section 13 (Law Applicable to Contracts of Employment and Employment Legal Relationships) provides: ‘(1) An employee and an employer may agree on the law applicable to an employment contract and employment legal relationships. Such choice may not abrogate or restrict the protection of an employee that is determined by prescriptive or prohibitive norms of a law of the State which law would be applicable in conformity with Paragraphs two, three, four or five of this Section. (2) If an employee and employer have not chosen the applicable law, the laws of Latvia shall apply to the employment contract and employment legal relationships in so far as Paragraphs three and four of this Section does not provide otherwise.’

International legal instruments

As far as the area of international labour law is concerned, the matters related to termination of employment relations are regulated by specific conventions and recommendations of the International Labour Organization (ILO) in considerable detail (for instance ILO Convention No.158 (1982) Termination of Employment Convention and Recommendation No.166 (1982) accompanying the Convention).

The European Union law

The European Union law does not directly define the grounds and procedure for termination of individual employment relations, thus leaving it within the scope of authority of each Member State. Nevertheless, the European Union legislation (e.g. Charter of Fundamental Rights of the European Union, the Community Charter of the Fundamental Social Rights of Workers, the revised European Social Charter) state applicable general principles and rules that must be taken into account when terminating the employment relations, for instance, concerning collective redundancies, the principle of non-discrimination etc.

EU Directives implemented in the Labour Law

Latvian national law instruments implement regulation deriving from the EU Directives containing reference also to certain aspects of the matter of employment relation termination:

- Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (as well as the amending Directive 2002/73/EC);

(3) If an employee and employer have not chosen the applicable law and the employee in conformity with an employment contract normally performs his or her work in another state, the law of that other state shall apply to the employment contract and employment legal relationships.

(4) If an employee and employer have not chosen the applicable law and the employee in conformity with an employment contract does not perform his or her work in one and the same state, the law of the state in which is located the undertaking which hired the employee shall be applicable to the employment contract and employment legal relationships.

(5) The provisions of Paragraphs three and four of this Section shall not apply if it appears from the circumstances that the employment contract or employment legal relationships is more closely linked with another state. In such case, the law of the other state shall apply.

(6) Within the meaning of this Section, a law shall mean any legal norm.'

- Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship;
- Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship;
- Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work;
- Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex;
- Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies;
- Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP;
- Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;
- Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses;
- Directive of the European Parliament and of the Council 2002/14/EC of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community.

2.3. Sources of law and their hierarchy

The sources of law in employment relations

Pursuant to Article 1 of the Labour Law, legal employment relationships in Latvia are regulated by (1) the Constitution of the Republic of Latvia, (2) the norms of international law which are binding on the Republic of Latvia, (3) Labour Law and (4) other regulatory enactments, as well as by (5) collective agreements and (6) working procedure regulations.

General sources ('laws' in wider sense)

The regulation of employment relations therefore derives from the following general sources:

- the Constitution of the Republic of Latvia (Satversme);
- international agreements entered into by the Republic of Latvia;
- the laws of the Republic of Latvia (primarily Labour Law and the Civil Law, but also State Social Insurance Law, Unemployment Insurance Law, Unemployed and Employment Seekers Support Law, Law On Protection of Employees in Case of Corporate Insolvency);
- the Cabinet of Ministers (i.e. Government) regulations (regulations primarily relate to setting of minimum salary; remuneration matters for specific types of employment relations; listing of fixed term jobs, etc.);
- regulations passed by municipalities (such regulations might concern only certain working procedures for specific professions in the territory of the municipality. Regulations passed by municipalities do not have country-wide application);
- other legal acts adopted by competent bodies through delegation.

Brief comments concerning the two key laws (i.e. the Labour Law and the Civil Law) are rendered below.

The Labour Law. Latvia's Labour Law is the main legal instrument for regulating employment relations. Employers, employees and their representatives must base their activities on it.

The Labour Law came in force on 1 June 2002. The Labour Law includes provisions transposing many EU employment and social policy Directives, such as those relating to equal treatment, collective redundancies, working time and rest, the protection of young workers and posting employees to work abroad. The Law also incorporates principles of the Council of Europe's European Social Charter and various International Labour Organisation (ILO) Conventions. The experience of Western countries (especially Germany) has been taken into account, too. The main purpose of the Law is to ensure the equality of the relationship between the employer and the employee.

The Labour Law stipulates the procedure of how the employer can terminate employment relations with the employee. According to the Labour Law the employer is obliged to comply with the stipulated procedure of notice – a written warning about termination of

the employment agreement, notice term and other provisions stipulated by the Law, as well as an additional obligation – to justify termination of an employment agreement with any of the grounds for notice specified in the Labour Law. If any of those provisions is not complied with, the employee is entitled to refer to the court and, depending on the basis of the claim, demand declaring the employer's notice invalid, renewal to the position or various types of compensation, for example, for compulsory absence from work, performance of less paid work or unequal attitude.

The Civil Law. Application of the Labour Law norms is closely related to the norms of the Civil Law as the Labour Law contains the special legal norms, while the Civil Law – the general legal norms, that also apply to the employment agreement. Article 28 Section 3 of the Labour Law stipulates that 'the provisions of the Civil Law shall apply to the Labour Law to the extent it is without prejudice to this law and other legislative acts regulating employment relations.' Thus, the provisions of the Civil Law apply, for example, to the matters of validity of a legal transaction, declaring a transaction invalid, expression and authenticity of one's will, as well as other matters not regulated by the Labour Law.

Individual legal sources

The following legal sources include the legal contents of employment relations with a particular person or a group of persons:

- collective agreement;
- working procedure regulations;
- employment agreement.

Inadmissibility of employment agreement provisions worsening the state of the employee in relation to law or a collective agreement

It should be noted that Labour Law Article 6 (Invalidity of Regulations that Worsen the Legal Status of Employees) provides that provisions of a collective agreement, working procedure regulations, as well as the provisions of an employment agreement and orders of the employer which, contrary to regulatory enactments, worsen the legal status of an employee, shall not be valid. Similarly, the provisions of an employment agreement which worsen the employee's status in comparison to the collective agreement are not legally valid.

2.4. Role of judge-made law and custom

Judge-made law (judicature)

With the transformation of Latvian legal system pursuant to the principles of a democratic state, the quality in application of legal provisions has increased along with this process and continues its development also nowadays. In line with this development the court practice (or rather – judicature) has earned the recognition of a supplementary legal source. Some eight years ago (1997-1998) it was still a rare occasion if a court referred to the ruling of another court in the judgement. Nevertheless, it has now become a usual practice for judges to refer to judicature in the reasoning of the judgements, including those passed in the cases concerning termination of employment relations.

Application of customs

The application of customs is very limited in Latvia legal system. Latvian Civil Law Article 2 treats application of the customs with caution by providing that ‘Customs may not revoke or change the law. Customs shall be applied in cases provided by the law.’ Latvian Labour Law does not include any reference to occasions where customs should be applied concerning the process of terminating employment relations. It therefore follows that the regulation of the law would prevail over a custom in this aspect of employment law.

3. SCOPE OF THE RULES GOVERNING THE TERMINATION OF AN EMPLOYMENT RELATIONSHIP, SPECIAL ARRANGEMENTS

3.1. Ways of terminating an employment relationship

In Latvia employment relations may be terminated on the basis of operation of law. These instances are referred to in Section 5 of the Report below. Other instances of terminating employment agreement are the following.

Ways of terminating the employment relationship otherwise than by operation of law

Employment relations may be terminated:

- upon agreement of the parties (mutual agreement);
- upon occurrence of certain conditions (for example, expiry of the term of the employment agreement);

- upon the employee's resignation notice (resignation with an advance notice or resignation for an important reason with immediate effect);
- upon the employer's notice (dismissal and other instances when termination occurs on the basis of a unilateral termination notice issued by the employer);
- upon the employer's request during probationary period;
- by a court ruling if the employer requests termination of employment relations due to an important reason (concerning this ground please see additional notes immediately below).

Exceptional termination of the employment agreement due to an important reason (Article 100 Section 5 of the Labour Law)

The employer is entitled by law to request exceptional termination of the employment agreement in cases not mentioned in the Labour Law, by bringing action to the court. The employer may bring action to the court if it has an important reason. Such reason is deemed to be any condition that does not allow continuation of employment relations on the grounds of considerations of moral and decency. The claim should be filed within one month from the moment the employer discovered existence of such important reason. The issue of the existence of the important reason will be decided by the court according to considerations of justice and general principles of law. The authors of the Report are not aware of any Supreme Court judgement in such a case. Nevertheless, the authors of the Report are aware of a case where an employer brought such action with a court based on arguments that it is impossible to continue employment relations with particular employees because they had initiated a fight and seriously beaten their colleague at work concerning a dispute related to employment matters (due to the fact that the incident occurred outside the territory of the employer and not during working hours (it occurred during a trip to working premises) it was not possible to dismiss the relevant employees on the basis that they had acted illegally during the performance of work). Nevertheless, the employer considered that the abovementioned illegal activity was an important reason for requesting termination of employment relations at court.

Other reasons (not expressly related to the wish of the contracting parties)

The other grounds of terminating employment relations (i.e. a court judgement if the imposed penalty concerns a person's deprivation of liberty for more than 30 days; termination upon demand by third parties; death of the employer; death of the employee) are outlined in Section 5 of the Report below.

3.2. Exceptions or specific requirements for certain employers or sectors

Applicability of Labour Law

The rules of Labour Law and other regulatory enactments that regulate legal employment relationships in Latvia are binding on all employers and on employees if their mutual legal relationships are based on an employment agreement. However, Labour Law is not applicable where there is no employment agreement entered into between the parties or on occasions when special laws rule out the application of Labour Law in whole or partially.

Members of the armed forces

Article 12 of Military Service Law provides that regulatory enactments regulating legal employment relationships do not apply to a soldier. The same article specifies that the length of a service day of a soldier shall depend on the necessities of service. A detailed division of time for the performance of service duties and other conditions thereof are provided by Military Interior Service Regulations and orders issued on the basis thereof. Article 15 of Military Service Law provides, *inter alia*, that soldiers are prohibited from joining labour unions, organising strikes and participating in them. The service relations concerning other members of the armed forces and the staff in command are also not regulated by Labour Law.

Civil servants

The appointment, dismissal and other matters related to legal relationships within civil service are regulated by State Civil Service Law. A civil servant is appointed and dismissed by an order issued by a competent official. The remuneration of the civil servant is established accordingly. Labour Law also has certain, yet quite limited, regulatory impact on civil service relationships. Namely, Article 2 Section 4 of the State Civil Service Law provides that legal acts concerning legal employment relations are applicable within civil service regarding work and rest time, payment of remuneration, responsibility of the employee and terms (deadlines) only insofar as the special law (State Civil Service Law) does not regulate otherwise. Given that the process of dismissal of civil servants is not governed by employment laws and civil servants do not enter into employment relations with the public body, these matters fall outside the scope of the present Study.

Other categories of legal relationships not subject to general employment laws

Other such categories of employees whose legal relationships are primarily governed by special legal provisions include the police staff, persons working on board ships, individual service providers on service contract basis (mainly self-employed persons). The service conditions of the members of the clergy are also regulated by specific internal rules of the relevant religious communities.

3.3. Exceptions or specific requirements for certain types of contract

This Subsection of the Report primarily addresses the requirements regarding expiry and termination of fixed term and fixed task employment agreements.

The instances when fixed duration employment agreements are permissible and maximum duration of a fixed term contract

Although analysis concerning types of employment agreements falls outside the scope of the present Report, it is relevant also in the aspect of termination of employment relations to specify on which occasions it is at all permitted to enter into an employment agreement for a fixed term. Article 44 of the Labour Law lists those instances in an exhaustive manner. Namely, an employment agreement may be entered into for a specified period in order to perform specified short-term work, such as:

- seasonal work (e.g. agricultural works like sowing, planting, ganing, certain forest works, employment at summer cafes, restaurants and other such clearly seasonal works as listed by special Cabinet of Ministers regulations);
- work in activity areas where an employment agreement is normally not entered into for an unspecified period, taking into account the nature of the relevant occupation or the temporary nature of the relevant work (e.g. certain types of employment in such areas as culture, sports, trade, etc, as defined by special Cabinet of Ministers regulations);
- substitution of an employee who is absent or suspended from work,
- substitution of an employee whose permanent position has become vacant until a new employee is hired;
- incidental work which is normally not performed in the undertaking (e.g. carrying of a specific project, work of an archivist, work of an electrician, etc.);
- specified temporary work related to short-term expansion of the scope of work of the undertaking or to an increase in the amount of production (in applying this

ground strict interpretations should be applied and the fixed term contract is justified only if its is clearly understandable that the increase in the operations will be temporary);

- emergency work in order to prevent the consequences caused by *force majeure*, or other exceptional circumstances which adversely affect the normal course of activities in an undertaking; and
- temporary public work intended for an unemployed person or work related to the implementation of active employment measures.

It should be noted that according to the currently effective wording of the Latvian Labour Law, the maximum permitted duration for a fixed term contract is two years. Nevertheless, a draft law which entails prolongation of this period for up to three years is currently in legislative process.

Additional comments concerning employment agreements of members of the Council or Board of commercial companies are rendered in Section 3.5 of this Report below.

Court practice example clarifying a case when it is allowed to enter into an employment agreement for a fixed term

In the case⁹ of S.B. claim against SIA ‘Elwo’ on 10 January 2003 the plaintiff concluded the employment agreement with the defendant for the position of an electrician until 13 June 2003. The employment relations with the plaintiff were terminated as of 14 June 2003 due to expiry of the employment agreement. S.B. brought a claim to the court on re-establishment to the position and requested, inter alia, declaring that the employment agreement with him was concluded for indefinite period. The claim was rejected and the Supreme Court Senate in this case agreed with the stance of the court of appeal and established that the employment relations had been correctly terminated, because ‘in accordance with Article 44 of the Labour Law it was possible to enter into a fixed term employment agreement with S.B. as an electrician due to the generally changeable volume of works in construction and consequently changeable workload for the employed.’

⁹ Supreme Court Senate Department of Civil Cases, Judgment of 20 October 2004 in the Case No. SKC–556. Source: Supreme Court Judicature Generalisation Department, ‘On application of laws in disputes related to termination or amending employment contracts’, 2004.

The validity term – occurrence of certain conditions (Article 113 of the Labour Law)

When concluding an employment agreement for a fixed term, the contract expiry term may be:

- specified;
- unspecified, for example, in the case when the employee is hired for a term to substitute an absent employee.

The expiry of a fixed term contract

If the contract expiry term has been specified, the employment relations expire on the day when the employment agreement expires. If the employer does not intend to continue the employment relations, it should issue a notice on termination of the employment relations to the employee before the expiry of the contract. In the event none of the parties require termination of the contract and the actual employment relations continue, the employment agreement is deemed to be concluded for an indefinite period.

Latvian courts, when examining a claim on re-establishment to the position in the case the employment relations have been terminated pursuant to Article 113 of the Labour Law¹⁰ due to expiry of the employment agreement, verify whether:

- in the specific case there was a legal basis to conclude the employment agreement for a fixed period,
- the term of the contract is indicated in the employment agreement, and
- the link of the fixed period with the specific matter follows from operation of law or it follows from the concluded employment agreement.

If entering into an employment agreement for a fixed term was not permissible in the given circumstances, such contract is deemed to be concluded for an indefinite period, and there are no grounds to apply expiry of the fixed term as the reason for its termination and thus the claim on re-establishment (restoration) to the position should be satisfied by the court.

¹⁰ Labour Law Section 113 (Termination of an Employment Contract Entered into for a Specified Period) provides: '(1) Employment legal relationships pursuant to a contract entered into for a specified period shall terminate on the day when the term for the employment contract expires.
(2) If an employment contract entered into for a specified period of time does not include a final date, the employer has a duty to notify the employee in writing of the expected termination of employment legal relationships not later than two weeks in advance.'

It should be noted that termination of the employment agreement due to its expiry is also permissible in cases when upon expiry of the term the employee experiences temporary disability or the employee is on vacation, or they do not perform their work due to other justifiable reasons. In such cases Article 109 Section 3 of the Labour Law¹¹ does not apply, as the employment relations are not terminated pursuant to the employer's notice but due to expiry of the term of the employment agreement.

Premature termination of a fixed term or fixed task contract

The general provisions concerning termination of employment relations apply also to fixed term and fixed task employment contracts. Namely, the employee is entitled to resign pursuant to general provisions and the employer is entitled to unilaterally terminate the fixed term or fixed task employment agreement on general grounds.

Replacing of an indefinite period agreement with fixed term employment agreement

According to general principles, replacing of an unlimited term employment agreement with a fixed term employment agreement is not permissible because such agreement worsens the legal position of the employee and therefore it should be declared invalid in accordance with Article 6 of the Labour Law¹². However, there are exceptions to this principle.

An example of the court practice follows. In the case¹³ of J.O. claim against BO SIA 'Rīgas 1.slimnīca' of Riga Municipality on re-establishment to the position, the plaintiff was appointed Director of the City of Riga Clinical Emergency Hospital on 18 June 1996 by concluding an employment agreement for an unlimited term. After reorganization of the Hospital into a limited liability company J.O. was appointed its Director by concluding an employment agreement for a term of three years on 16 August 1999. On 15 August 2002 the plaintiff was dismissed due to expiry of the employment agreement pursuant to Article 113 of the Labour Law. In the claim J.O. indicated that the conclusion of the new fixed term employment agreement considerably worsened his legal position

¹¹ Labour Law Section 109 (Prohibitions and Restrictions on a Notice of Termination by an Employer), Section 3 provides: 'Employer is not entitled to give a notice of termination of an employment contract during a period of temporary incapacity of an employee, as well as during a period when an employee is on leave or is not performing the work due to other justifiable reasons.'

¹² Labour Law Section 6 (Invalidity of Regulations that Erode the Legal Status of Employees) Paragraph (1) provides: '(1) Provisions of a collective agreement, working procedure regulations, as well as the provisions of an employment contract and orders of an employer which, contrary to regulatory enactments, erode the legal status of an employee, shall not be valid.'

¹³ Supreme Court Senate Department of Civil Cases, Judgment of 7 May 2003 in the Case No. SKC-238. Source: Supreme Court Judicature Generalisation Department, 'On application of laws in disputes related to termination or amending employment contracts', 2004.

and was contradictory with Article 7 of Labour Law¹⁴. The Supreme Court Senate in this case indicated that conclusion of a fixed term employment agreement with the Director of the company was stipulated by Article 44 Section 3 of the Law on Limited Liability Companies, thus it did not worsen the employee's legal position in comparison with that stipulated by the law, although before reorganization the employment agreement had been concluded with him for unlimited term. Additional comments concerning employment of management members of corporate entities are rendered in Section 3.5 of the Report.

If follows from the above that conclusion of a fixed term employment agreement instead of the former contract with indefinite duration is acceptable, provided that conclusion of an employment agreement for a fixed term is stipulated by a special law. Thus, conclusion of the employment agreement for a fixed term is also stipulated for directors of public and municipal agencies. Therefore, in the cases when a state owned company is reorganized in an agency and the director of the company agrees to continue management of the agency after reorganization the employment agreement with them should be concluded for a fixed term regardless that the previous employment agreement with this person was concluded for an indefinite period.

3.4. Exceptions or specific requirements for certain categories of employers

The size of the undertaking in the event of collective redundancy

In Latvia, the size of the undertaking (company) matters in connection with collective redundancy. According to Labour Law Article 105 (Collective Redundancy), Section (1), collective redundancy is a reduction in the number of employees where the number of employees to be made redundant within a 30-day period is:

- at least 5 employees if the employer normally employs more than 20 but less than 50 employees in the undertaking;

¹⁴ Labour Law Section 7 (Principle of Equal Rights) provides:

'(1) Everyone has an equal right to work, to fair, safe and healthy working conditions, as well as to fair work remuneration.

(2) The rights provided for in Paragraph one of this Section shall be ensured without any direct or indirect discrimination – irrespective of a person's race, skin colour, gender, age, disability, religious, political or other conviction, ethnic or social origin, property or marital status or other circumstances.

(3) In order to promote the adoption of the principle of equal rights in relation to disabled persons, an employer has a duty to take measures that are necessary in conformity with the circumstances in order to adapt the work environment to facilitate the possibility of disabled persons to establish employment legal relations, fulfil work duties, be promoted to higher positions or be sent for professional training, insofar as such measures do not place an unreasonable burden on the employer.'

- at least 10 employees if the employer normally employs more than 50 but less than 100 employees in the undertaking;
- at least 10 per cent of the number of employees if the employer normally employs at least 100 but less than 300 employees in the undertaking; or
- at least 30 employees if the employer normally employs 300 and more employees in the undertaking.

It therefore follows that the additional protective provisions on collective redundancies are applicable only in undertakings with more than 20 employees (i.e. in entities where at least 21 persons are employed). Consequently, termination of, say, 12 employees due to redundancy in a company of 20 employees would not qualify as collective redundancy pursuant to Latvian Labour Law.

3.5. Exceptions or specific requirements for certain categories of employees

Restrictions in applying Labour Law – eased termination procedures of Board and Council members pursuant to provisions of commercial law instruments

Employment relations with employees belonging to certain categories are, in addition to the Labour Law, regulated by other legislative acts depending on the legal status of these employees. These legislative acts may stipulate regulation that differs from the Labour Law in matters regarding, for instance, hiring and termination of employment relations, salaries and vacations. Therefore, in cases when the substantiations or procedure of termination of the employment agreement are stipulated in a legislative act regulating employment relations with a certain category of employees, these substantiations and procedure should be applied. These comments primarily relate to termination procedures applicable to members of management bodies of commercial companies or undertakings. As far as termination procedure of a corporate management body member is concerned, Commercial Law shall be regarded as a special law in relation to the Labour Law. Several Supreme Court Senate judgments contain such references to the need to apply a special law. It has to be emphasized that the practice regarding termination of management officers has been shaped and clarified by court practice. There is no clear reference in the Labour Law itself that dismissal procedures of specific management officers are eased in comparison to the general procedures.

An example of the court practice follows. For example, in the case¹⁵ of O.R. (plaintiff) vs. SIA 'Langa' the plaintiff was appointed SIA 'Langa' Vice-President with the signature rights (corporate representation rights) on 12 June 2001, but was dismissed from the position of the company's Vice-President with the decision of the Shareholders Meeting of 7 November 2001. The plaintiff requested the court to declare his dismissal from performance of duties of the Vice-President invalid, to re-establish him as the Vice-President and to collect damages for absence from work. Riga Regional Court found that there were employment relations between the parties and that the defendant had not complied with the termination notice substantiation requirement and procedure stipulated by the Labour Law and satisfied the claim. The Supreme Court Senate cancelled the judgment of the court of second instance (Riga Regional Court), indicating that O.R. was appointed to and dismissed from the position of SIA 'Langa' Vice-President with the signature right with the decision of Shareholders Meeting. Such authority is stipulated exclusively for the Shareholders Meeting in Article 41 Section 1 Subsection 6 of the Law on Limited Liability Companies. Therefore the Supreme Court Senate concluded that the court of second instance had incorrectly applied the legal provisions of the Labour Law to the specific legal relations instead of applying the legal provisions included in the special law and the company's Articles of Association on dismissal of the company's Vice-President with the signature right and the procedure of disputing it.

Although the above noted dispute was resolved in accordance with the Law on Limited Liability Companies which was completely replaced by the Commercial Law as of 1 January 2005, there are no grounds to alter the former court practice in regard to members of executive bodies at commercial companies. Thus, Article 224 Section 1 of the Commercial Law also stipulates that Board Members of a limited liability company are elected and dismissed by the decision of the Meeting of Members (Board Members of a public limited company are elected and dismissed by the company's Council, Commercial Law Article 305 Section 1, Article 306 Section 1).

In closing of the Subsection it may be summarised that Article 44 Section 3 of the Labour Law¹⁶ stipulates that the employment agreement should be concluded with members of

¹⁵ Supreme Court Senate Department of Civil Cases, Judgment of 28 January 2004 in the Case No. SKC–35. Source: Supreme Court Judicature Generalisation Department, 'On application of laws in disputes related to termination or amending employment contracts', 2004.

¹⁶ Section 44 Paragraph 3 of the Labour Law provides '*An employment contract with members of executive bodies of capital companies shall be entered into, unless they are employed on the basis of another*

executive bodies at capital companies, unless they are employed under another civil contract. However, conclusion of the employment agreement with Board or Council members does not suspend application of the Commercial Law norms to them. These relations are subject to the norms of Labour Law to the extent it is not otherwise specified in the Commercial Law as a special law applicable to Board or Council members. As the Commercial Law stipulates the procedure of election and dismissal of Board or Council Members, the provisions of Labour Law concerning dismissal of Board or Council Members are not applicable in these cases, thus Board or Council Members can be dismissed by a decision of the Shareholders Meeting (decision of the Council at a public limited company) without complying with the provisions of the Labour Law on termination of employment relations. As the activities in the position of a Board or Council Member are explicitly loyalty based relations, in the event of dismissal a Board or Council Member is not granted the right to claim re-establishment to the former position at the court. It should be noted that Latvian courts have now uniformly adopted the above stance and apply it consistently.

Other exceptions or specific requirements

Although this is covered also in Dismissals section (Section 6) of the present Report, the following should be briefly noted as far as specific requirements concerning certain employees are introduced:

- the employer is prohibited from issuing the employment agreement termination notice to a pregnant woman, as well as to a woman following the period after the childbirth up to one year, but if a woman is breastfeeding – during the whole period of breastfeeding except (1) in cases of material breach or misconduct or (2) due to liquidation (winding up) of the employer;
- the employer is prohibited from issuing the employment agreement termination notice to a disabled person except (1) during probationary period, or (2) in cases of material breach or misconduct, or (3) due to liquidation of the employer;
- the employer is prohibited from issuing the employment agreement termination notice during a period of temporary incapacity of an employee, as well as during a period when the employee is on leave or is not performing the work due to other justifiable reasons;

contract governed by civil law. If the executive body of a capital company is employed on the basis of an employment contract, it shall be entered into for a specified period.'

- the employer is prohibited from issuing the employment agreement termination notice to an employee – a member of a labour union – without prior consent of the relevant labour union except (1) during probationary period or (2) if the employee was at work in a condition of alcoholic, narcotic, or other such type of intoxication, or (3) if a previously employed person is re-established to the particular position or (4) due to liquidation of the employer.

3.6. Termination of employment upon demand by third parties

When addressing certain exceptions and peculiarities, it should be noted that Latvian Labour Law includes regulation to the effect that employment relations may be terminated upon demand by third parties with a person under 18 years of age. Such demand should be filed in writing. (Article 115 of the Labour Law)

Persons entitled to file the demand

The right to demand termination of employment relations pertains to:

- parents;
- custodians;
- State Labour Inspectorate.

Cases when it is permitted to demand termination of employment relations

A demand may be filed in the case when a person under 18 is employed at work that:

- threatens safety, health or moral of this person;
- may negatively influence their development and education (for example, in the case a person is employed at a place where alcoholic beverages are sold).

The employer's obligations

The employer:

- is required to terminate the employment relations with the employee within 5 days after receipt of a duly substantiated demand;
- is required to pay to the employee remuneration (severance) in the amount of no less than one average monthly salary.

4. MUTUAL AGREEMENT

This section of the Report relates to the regulation of terminating employment relations by mutual agreement of the parties concerned (i.e. the employee and the employer).

General notes

The possibility to terminate an employment agreement by mutual agreement is expressly regulated in Latvian Labour Law. A trend may be noted in Latvia that amongst employers the form of mutual agreement is commonly referred to as being the ‘safest’ option for terminating employment relations with an employee (unless the employee has resigned on his/her own initiative, of course). Practice suggests that employers would sometimes prefer the form of mutual agreement even if there were grounds to terminate the employment relations by unilateral act of the employer. This attitude certainly does not extend to fraud cases or other occasions of material breach when employees are being dismissed pursuant to the relevant provision of the Labour Law.

4.1. Substantive conditions

Mutual agreement of the parties – the subject

As the employment agreement is concluded by agreement between the employer and the employee, it can also respectively be terminated on the grounds of a written agreement between the parties.

The only mandatory substantial component of such written contract is mutual agreement to terminate employment relations. When lacking this component, the agreement may not serve as a basis for termination of the particular employment relations.

The possibility of using mutual agreement as legal means for terminating an employment agreement is not limited by any provisions of legal acts. For instance, it is not required first to inform/consult the employee’s representatives or the labour union before entering into such agreement.

The legal provision – Article 114 of the Labour Law

The relevant legal regulation is included in Article 114 of Latvian Labour law which is titled ‘Agreement between the Employee and Employer’ and provides: ‘An employee and

the employer may terminate legal employment relationships by mutual agreement. Such contract shall be entered into in writing.’

Termination of the employment agreement by another agreement

The form of mutual agreement actually implies that the employment agreement is terminated by another civil agreement. Therefore, the general legal regulation applicable to civil agreements is relevant also in the case of mutual agreement on termination of employment relations. Given that Labour Law does not include any additional regulation apart the quoted Article 114, in the matters such as the intent of the parties, expression of will, deficiencies in contracting process, etc., the parties shall be guided by the general rules of the Civil Law of Latvia.

4.2. Procedural requirements

Written form

The parties must take into account that the agreement on termination of the employment agreement has to be made in writing. Each contracting party shall receive one original of the signed agreement. The written form is a substantial requirement for this type of agreement. Absence of a written form leads to invalidity of the agreement as such. Consequently, an oral mutual agreement concerning termination of employment relations is not binding and it is not enforceable.

The reasoning – no specific requirements

The parties are not required to outline in the mutual agreement the reasoning or any background considerations why the mutual agreement on termination of employment relations is entered into. At the same time, the parties are free to state any such reasons in the text of the agreement, if they wish to do so.

The date of termination of employment relations – advisable to indicate in the mutual agreement, but it is not a mandatory requirement

The parties usually specify the date of terminating the employment relations in the written mutual agreement. However, if the parties have not specified the date when employment relations shall be considered terminated pursuant to the mutual agreement, such failure does not render the mutual agreement invalid. In such case the employment relations shall be considered terminated on the date when the mutual agreement is

executed by all the parties thereto. It therefore follows that the date of the mutual agreement as such is a necessary component of the contract.

4.3. Effects of the agreement

Termination of the employment relationship

The employment relation is terminated in consequence of a duly executed mutual agreement.

Severance pay

The law does not require payment of severance in case employment relations are terminated by mutual agreement of the parties. Nevertheless, it is quite common to agree on the compensation payable to the employee by the employer in the cases when employment relations are terminated by mutual agreement. Such arrangement is then effective and enforceable as a contractual obligation. The employer's failure to pay the agreed compensation does not *per se* render the mutual agreement void. In such cases the employee may apply to court to require enforcement of the compensation payment obligation.

If compensation is agreed, it is taxed in the same way as the salary. Latvian courts have clarified that compensation stipulated by mutual agreement concerning termination of employment relations qualifies as employment related income and the employer is entitled (and obliged) to withhold the personal income tax and the employee's share of mandatory social security contributions when compensation is paid out. However, in the cases when the mutual agreement states that the parties have agreed that the indicated amount of the compensation is 'net' (i.e. after taxes), the employer is required to pay out to the employee the agreed 'net' amount and to gross it up for taxation purposes to remit the applicable personal income tax and mandatory social security contributions.

Unemployment benefits – no waiting period

Termination of employment relations by mutual agreement does not, by itself, trigger any restrictions related to access of unemployment benefits. The same is true in relation to retirement pensions.

Unemployment benefit

In case employment relations are terminated on the grounds of mutual agreement, the employee is entitled to the unemployment benefit from the day when he/she has filed the necessary documents¹⁷ with State Social Insurance Agency confirming entitlement to unemployment benefit.

Article 13 Section 1 Subsection 2 of Unemployment Insurance Law lists two instances when a two-months waiting period is imposed. To specify, it is regulated that unemployment benefits are granted from the day when the unemployed person has submitted all documents with State Social Insurance Agency, but not sooner than two months after the day when the status of the unemployed has been obtained, if (1) the person has become unemployed after terminating of his job relations according to his own resignation (own will) or (2) due to a violation. Mutual agreement is not listed among the two-month period qualifiers. It is therefore on some occasions a driver for employees to achieve mutual agreement with the employer instead of using the unilateral resignation option.

The amount of the unemployment benefit is determined by taking into account the length of the social insurance period and the average of the person's insurance contribution salary. The total period for receiving of the unemployment benefit is nine months in a twelve month period from the day when the benefit is granted. The unemployment benefit is paid, by taking into account duration of unemployment:

- during the first 3 months 100% of the granted benefit is paid;
- during the following 3 months 75% of the granted benefit is paid;
- during the last 3 months 50% of the granted benefit is paid.

Retirement pensions

The fact of mutual agreement as a basis for termination of employment relations has no effect on the statutory retirement pension scheme. There is no information available to the authors suggesting that the previous statement would differ in relation to private retirement pension schemes.

¹⁷ When applying for unemployment benefit the person is required to submit to State Social Insurance Agency: (1) an application for granting of the benefit; (2) a certificate issued by the State Employment Agency on granting of the status of the unemployed; (3) a document proving the change of a surname, if there are different surnames mentioned in the applicant's documents; (4) documents proving insurance periods (e.g. payroll tax record). Additional documents are required in specific cases (e.g. if the benefit is requested by a person who, before obtaining the status of the unemployed, has taken care of a child under 1.5 years of age or a disabled child under 16 years of age, or has served in the mandatory state military service.) The person applying for the benefit shall produce a personal ID document.

Company retirement pension schemes are not generally practicable in Latvia, although there might be a few special cases where the grounds of terminating employment relations might be of relevance. Nevertheless, such information is not publicly available and the authors are not aware of any court practice on such matters.

Sickness insurance

The sickness insurance covered by the state social insurance scheme¹⁸ (public system) is available to (1) an insured employee; (2) a self-employed person, who has made social insurance contributions; (3) a spouse of the self-employed person, who has voluntarily joined social insurance scheme. Therefore, in case a person becomes unemployed after termination of employment relations with his/her employer (including on mutual agreement grounds), the person is not entitled to the regular public sickness insurance cover.

If the employer has entered into private health insurance schemes for its employees, usually such health insurance covers are available to employees only during employment with the particular employer.

The form of mutual agreement as a ground for termination of employment relations therefore has no special impact on the matters related to sickness insurance, apart from the general consequences which are caused by the fact of termination of the employment relations as such.

4.4. Remedies

The general remedies available to parties of a civil contract

Apart from the general ones, there are no special remedies available in cases of termination of employment relations on the basis of mutual agreement. The remedies in relation to termination of employment are the ones generally available to contracting parties in civil relationships. Thus, the main remedy available is the court protection (i.e. possibility to raise a claim in a court of law on challenging of the mutual agreement). Apart from the mutual agreement cancellation claim there may certainly exist also other

¹⁸ Under the State Social Insurance scheme, sickness pay is granted from the fifteenth day of the incapacity from work in the amount of 80% from the person's average contribution salary (for the first 14 days of sickness the sickness pay is covered by the employer).

claims arising from the mutual agreement, for instance, an enforcement claim regarding payment of the contractually agreed compensation. As far as the challenging of the fact of employment relation termination is concerned, it may be noted that if it is established that the parties (the employer and the employee) were aware or should have reasonably been aware that the mutual agreement concerns termination of employment relations, any party would have little or no chances to unilaterally achieve cancellation of the mutual agreement and restoration of the employment relations.

Competent courts

There are no specialized labour courts in Latvia. The disputes concerning mutual agreement therefore fall within the competence of regular civil courts of general jurisdiction. In case the employee wishes to bring an action with a court, he/she may do that personally or by using their duly authorised representative (e.g. an attorney, consultant, family member). Labour unions do not have general competence to act on behalf of their members in individual disputes.

Burden of proof is on the plaintiff

In disputes regarding mutual agreement on termination of employment relations the burden of proof would rest on the plaintiff (the employer or employee). For instance, if the claim is targeted to challenge the validity of the mutual agreement, the party claiming so would have the burden to prove substantial deficiencies in the contracting process (for instance, that entering into mutual agreement occurred as a result of fraud, deceit or due to excusable substantial mistake). The principle of the employer's burden of proof in employment disputes, as stipulated by the Labour Law Article 125¹⁹ relates primarily to dismissal procedures.

State ensured legal assistance for qualifying applicants

A general law (State Ensured Legal Assistance Law) provides entitlement of qualifying applicants to state paid legal assistance (e.g. to persons who are unable to ensure protection of their rights, either fully or partially, due to their financial situation and income levels). Such assistance may well be required by a qualifying applicant in the case of a dispute related to mutual agreement on termination of employment relations.

¹⁹ Labour Law Section 125 (Duty of Burden of Proof) provides: *'The employer has a duty to prove that a notice of termination of an employment contract has a legal basis and complies with the specified procedure for termination of an employment contract. In other cases when an employee has brought an action in court for the reinstatement in work, the employer has a duty to prove that, when dismissing the employee, he or she has not violated the right of the employee to continue employment legal relationships.'*

4.5. Vitiating factors

General principles on contracts are applicable

There are no special vitiating factors provided by Latvian law in relation to mutual agreement on termination of employment relations. General principles on contracts are applicable thereto.

4.6. Penalties

Contractual penalties regulated by the mutual agreement

It is possible to stipulate in the mutual agreement amounts of contractual penalties for breaching, for instance, the agreed severance pay disbursement conditions, confidentiality commitments, etc. It is the opinion of the authors of this Report that excessive penalties addressed to the employee by the mutual agreement may be challengeable on the grounds that Latvian Labour Law does not prescribe for the possibility to impose contractual penalties upon employees in the course of employment relations. Given that a mutual agreement on termination of employment may also be qualified as related to employment matters, the employee is in a position to argue that such terms of the contract worsen the legal standing of the employee if compared to regulation of the law. Nevertheless, the authors are not aware of any court precedent where such contractual penalties incorporated in the mutual agreement would have been challenged by an employee on the grounds as noted above.

General liability provisions apply

According to general rules on contracts²⁰, the mutual agreement reached between employer and the employee must be performed in good faith. If a party permits breach of the mutual agreement provisions, its liability shall be established on the general grounds. As far as legal representatives of an employer (a body corporate – legal entity) are concerned, their negligence or actions related to intentional breach of the mutual agreement constitute breach by the employer. The employer may recover losses so caused from the relevant legal representatives.

²⁰ Latvian Civil Law Section 1 provides: 'Rights shall be exercised and commitments honoured in good faith.'

4.7. Collective agreements

Almost no impact on individual mutual agreements

Collective agreements in Latvia do not regulate contents of individual mutual agreements with employees concerning termination of employment relations. The provisions of the collective agreement may, however, be a guidance or reference source when (if) negotiating compensation amounts for the purposes of the mutual agreement.

4.8. Relations to other forms of termination

Mutual agreement during dismissal procedures or after resignation notice by employee

A possibility to enter into mutual agreement is open also during disciplinary or dismissal procedures. In this sense, the regulation on mutual agreement applies also in the context of dismissal.

It is possible to enter into mutual agreement also within the notice period after the employer has received resignation notice from the employee. For avoidance of doubt it is advisable and practicable in such instances to state in the mutual agreement that the employee has revoked his/her resignation notice and the employer has consented to that and it is the intent of the parties to mutually agree concerning termination of employment relations pursuant to Article 114 of Latvian Labour Law. The form of mutual agreement should not be confused with a situation where the employee renders unilateral resignation notice and the employer agrees (consents) that the employee leaves before the lapse of the notice period. Despite of the said employer's consent, the legal basis of termination of employment relations in such cases is resignation by the employee and not mutual agreement.

Mutual agreement – settlement – during litigation phase (court settlement)

Entering into mutual agreement is possible also during an ongoing employment dispute process. In this instance the mutual agreement would serve also as a settlement between the parties.

The contents of a court settlement is additionally regulated also by Latvian Civil Procedure Law. Apart from the written form requirement Latvian Civil Procedure Law provides that a settlement shall include information on:

- the names of the parties to the dispute and other details (for private individuals – personal ID number and address of residence but for legal entities – the company name, registration number and registered office);
- information on the object of the dispute;
- the statement concerning the settlement and outline of the actions that the parties have agreed to perform (if any) in the course of the settlement.

If the court finds the settlement as corresponding to the legal requirements it rules to approve the settlement and to terminate the hearing of the case on this basis. The settlement becomes fully valid (effective) only with such court approval. The court approves the settlement at a regular court hearing. The court may rule to approve the settlement *in absentia* of the parties if:

- the settlement is approved by a notary public (i.e. the notary public has verified that the parties have duly signed the settlement); and
- the text of the settlement includes the statement of the parties that they are aware of the procedural consequences of the settlement – i.e. that after the settlement is approved by the court a dispute on the same grounds may not be renewed at a court.

5. TERMINATION OTHERWISE THAN AT THE WISH OF THE PARTIES

5.1. Grounds for a contract to come to an end by operation of law

Ways of terminating the employment relationship regardless of the wish of parties

An employment agreement may be terminated otherwise than at the wish of the parties in the following instances:

- upon expiry of the employment agreement term;
- upon demand by third parties (see also Section 3.6 of the Report above);
- due to a court judgement imposing penalty related to deprivation of liberty (in cases the penalty concerns custody or deprivation of liberty for 30 days or longer) ;
- by death of the employer (applies only when the employer is a private individual and where the performance of the contract closely relates to the specific person);
- by death of the employee.

5.2. Procedural requirements

In this context there are practically no special procedural requirements. The existence of the relevant ground as such serves as evidence for termination of employment relations. Certain comments are however identified below.

Termination upon demand by third parties

Pursuant to Article 115, Section 1 of the Labour Law, (1) parents, (2) guardians or (3) State Labour Inspectorate may request termination of legal employment relationships with a person under 18 years of age if such person performs work which jeopardises his or her safety, health or moral or negatively affects his or her development or education. The relevant request shall be filed in writing. After receipt of such request the employer is obliged within a five-day period to terminate employment relations with the underage employee and to disburse to the employee compensation in the amount of one month average earnings. The Labour Law names the written request as a sufficient ground for termination of employment relations with the underage person. The employer must obey the request and disburse the one month average earnings to the former employee even if the employer considers the request unsubstantiated. The only employer's remedy in such situation would be applying to a court of general jurisdiction with damages claim (i.e. the disbursed termination payment to the underage employee) against the person (i.e. parents or guardians, or State Labour Inspectorate) who requested the allegedly unsubstantiated request to terminate the employment relations with the underage person.

Court judgement imposing penalty related to deprivation of liberty

Pursuant to Article 115, Section 3 of the Labour Law, employment relations terminate on the day when a court judgment becomes effective according to which the employee is sentenced to deprivation of liberty or custody (if such deprivation of liberty lasts for 30 days or longer).

Death of the employer (Article 116 of the Labour Law)

Pursuant to Article 116 of the Labour Law, the death of the employer constitutes a basis for the termination of employment relations if the fulfilment of the employee's obligations was closely related exclusively with the employer personally (e.g. a personal assistant, a situation when the employment agreement is concluded with a private

individual on taking care of that person). In such case the obligation to pay the already earned remuneration (salary) to the employee transfers to the employer's heirs.

Death of the employee (Civil Law Article 2195)

Upon the death of the employee the employment agreement expires by itself. It is therefore clear in the law that employment relations may not be transferred to heirs of the former employee on the basis of law.

5.3. Effects of the existence of a ground

If there exists one of the grounds as indicated above, the employment relations terminate.

Severance payments

As noted above, severance in the case an employment agreement with an underage individual is terminated due to a written request of (1) parents, (2) guardians or (3) State Labour Inspectorate, the employer is obliged to pay compensation (severance) in the amount of one month average earnings to the employee.

There are no severance payments stipulated by law if (1) expiry of the employment agreement term or (2) a court judgement sentencing an employee to deprivation of liberty or (3) the death of the employer (private individual) lead to termination of employment relations.

Funeral allowance

In case of the death of the employee (who has social insurance cover) the funeral benefit allocated and paid within state social insurance scheme is twofold the amount of the monthly average contribution salary of the deceased person.

Unemployment benefits

Termination of employment relations due to expiry of the employment agreement or due to the death of the employer does not anyhow affect the employee's entitlement to unemployment benefits provided that the person has valid state social insurance cover.

As the termination demanded by third parties may occur on the occasions when underage persons are employed, the underage person is entitled to unemployment benefits (a person may join the state social insurance scheme as of the age of 15 years).

When an employment agreement is terminated due to a court judgement imposing penalty related to deprivation of liberty, it depends on the duration of the arrest or imprisonment whether the person retains rights to unemployment benefits covered by the state social insurance after release from conviction (i.e. if the conviction does not exceed three months, the person may apply for the status of an unemployed on the basis of terminated employment relations with the former employer).

Retirement pensions

Termination normally has no effect on entitlements under public or private retirement pension schemes.

Sickness insurance

As explained in Section 4.3 of the Report above, sickness insurance cover by the state social insurance scheme relates to an insured employee or a self-employed person. Therefore, in case a person becomes unemployed after termination of employment relations, the person is not entitled to the regular public sickness insurance cover.

If the employer has entered into private health insurance schemes for its employees, such health insurance cover usually follows the validity period of the employment agreement.

5.4. Remedies

The general remedies available to parties of a civil law contract

Apart from the general ones, there are no special remedies available in cases of termination of employment relations on the basis not related to the wish of the parties.

Competent courts

The disputes related to termination of employment relations fall within the competence of regular civil courts of general jurisdiction. In case the former employee wishes to bring an action with a court, he/she may do that personally or by using its duly authorised

representative (e.g. an attorney, consultant, family member). Labour unions do not have general competence to act on behalf of their members in individual disputes.

Burden of proof is on the plaintiff

In disputes regarding termination of employment relations on the basis not related to the wish of the parties the burden of proof would rest on the plaintiff (the employer or employee).

State ensured legal assistance for qualifying applicants

A general law (State Ensured Legal Assistance Law) provides entitlement of qualifying applicants to state paid legal assistance (e.g. to persons who are unable to ensure protection of their rights, either fully or partially, due to their financial situation and income levels). Such assistance may well be required by a qualifying applicant in case of a dispute related to termination of employment relations.

5.5. Penalties

There are no specific penalties regulated by laws concerning matters when employment relations are terminated otherwise than at the wish of the parties. Certainly, general liability rules (civil, administrative, criminal liability) apply in cases of culpable negligence or intentional breaches permitted by the involved parties.

5.6. Collective agreements

The role of collective agreements in cases of termination of employment relations on the basis not related to the wish of the parties is very limited or none.

6. DISMISSALS

When terminating employment relations with an employee the employer must strictly adhere to:

- provisions of the Labour Law and other regulatory enactments (both external and internal legal acts),
- provisions of binding and applicable collective agreements (either those concluded within a company or within the whole area or sector), and

- provisions of an individual employment agreement concluded between the employer and the respective employee.

The Labour Law and other external regulatory enactments (i.e., international treaties, laws, regulations of the Cabinet of Ministers etc.) that regulate legal employment relations are binding on all employers irrespective of their legal status provided respective legal employment relations are based on an employment agreement.

When assessing the nature of legal relations, substance prevails over form. In one of the recent judgments the Supreme Court stipulated that irrespective of the literal wording of the agreement concluded between SIA 'Jelgavas autobusu parks' and V.P. stating that this agreement should be regarded as a service agreement, the given agreement shall be construed and interpreted as an employment agreement as it involved regular performance of scheduled passenger transportation services by a public transport company for a period of more than 4 years, receiving adequate remuneration in return²¹. Consequently, agreements, which are explicitly called employment contracts, are not the only agreements governed by the Labour Law. Should all the material elements of the employment agreement be present (i.e., there is agreement on certain regular obligations carried out for remuneration and under supervision and certain degree of control by an employer), any service agreement has to be considered and interpreted as an employment agreement.

The Labour Law provides an exhaustive list of grounds for an employer to be entitled to terminate employment relations unilaterally. In all other instances employment relations can be terminated only by a mutual agreement of both parties, an employee's resignation (termination) notice, upon occurrence of specific conditions or when requested so by certain third parties or the court.

6.1. Dismissal contrary to certain specified rights or civil liberties

General principle

In accordance with the International Labour Organization Convention No. 158 of 1982 'Convention Concerning Termination of Employment at the Initiative of the Employer',

²¹ Supreme Court Senate Department of Civil Cases, Judgment of 8 February 2006 in the Case No. SKC-0060-06

employment relations with an employee shall not be terminated unless there is a valid reason for such termination connected with:

- capacity of the employee; or
- conduct of the employee; or
- operational requirements of the undertaking, establishment or service²².

This general principle is entrenched also in the Labour Law. Article 101(1) provides that an employer is entitled to issue a unilateral termination notice in writing only provided it is related to the employee's conduct or his abilities, or is caused by management, organizational, technological or similar activities carried out within an undertaking.

Exhaustive legal grounds of the employer's unilateral termination notice are set out in Article 47 and 101 of the Labour Law.

Inadmissible grounds for dismissal

- membership in a labour union or participation in labour union's activities;
- seeking or holding an office of an employees' representative;
- organisation or participation in a lawful industrial action (e.g., a strike);
- lodging a complaint or participation in legal proceedings against an employer;
- race, ethnic origin, skin colour, gender, age, disability, religion, political or other conviction, or national or social origin, marital status, property or other circumstances (e.g., sexual orientation), unless provided otherwise by law;
- pregnancy;
- absence from work during maternity leave;
- absence from work during parental leave;
- absence from work, actual or foreseeable, in order to care for dependents;
- absence from work, as a consequence of compulsory military service²³ or other civil, or political service;

²² International Labour Organization Convention No. 158 of 1982 'Convention concerning Termination of Employment at the Initiative of the Employer', Article 4.

²³ Law on Compulsory Military Service, Sections 29, 36 and 37, provide that recruitment of an employee for compulsory military service cannot be a valid ground for termination of legal employment relations. It states that, upon provision of a warrant issued by the competent military service institution, the employer is obliged to release the employee from performance of his employment duties and retain his average monthly income for days when the employee must appear before the military service institution. However, where employment legal relations are suspended for a period of compulsory military service, the employer is obliged to pay the recruited employee a severance payment in the amount of his average monthly income and shall guarantee his return to the previous position after completion of the compulsory military service.

- temporary absence from work by reason of illness, accident or other unforeseen circumstances;
- leave for educational purposes;
- leaving the workplace in case of serious and immediate danger for the employee's life and health.

Prohibited grounds of discrimination

In accordance with the Labour Law, Article 29, Sections (1) and (9), differential treatment of an employee is prohibited provided it is based on any of the following 'prohibited grounds':

- employee's gender;
- employee's race;
- employee's skin colour;
- employee's age;
- employee's disability;
- employee's religious conviction;
- employee's political or other conviction;
- employee's national or social origin;
- employee's property;
- employee's marital status; or
- other circumstances of an employee.

Regarding interpretation of 'other circumstances', it shall be noted that, in the light of the Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, the first instance court in the case of M. S. v. Riga Secondary School of Culture ruled that 'other circumstances' shall be interpreted as including, inter alia, employee's sexual orientation²⁴. As a result, differential treatment on the grounds of a person's sexual orientation should also be forbidden irrespective of the fact that it is not explicitly listed among the 'prohibited grounds' provided by the Labour Law. This means that the list of 'prohibited grounds' is not exhaustive and courts, under appropriate circumstances, may provide protection also against dismissal on other grounds such as the employee's health (e.g., HIV), etc.

²⁴ See Riga North District Court, Judgment of 29 April 2005 in the Case No. C32242904047505

6.2. Dismissal on ‘disciplinary’ grounds

Legal provisions – particular subsections of Article 101, Section 1 of the Labour Law

Labour Law, Article 101 (Employer’s Notice of Termination) Section 1, Subsections 1, 2, 3, 4 and 5, list instances when the employer has a unilateral right to terminate employment relations with an employee on ‘disciplinary’ grounds. These instances are the following:

- 1) an employee has, without good (justified) cause, grossly violated the employment agreement or employment procedures;
- 2) an employee, when carrying out employment duties, has acted illegally and, as a result, has lost the employer’s confidence;
- 3) an employee, when performing work, has acted contrary to moral principles and such action is incompatible with the continuation of legal employment relationships;
- 4) an employee, when performing work, has been under influence of alcohol, narcotic or toxic substances;
- 5) an employee has manifestly violated employment protection regulations thereby jeopardising safety or health of other persons.

It should be noted that in practice the first two of the above mentioned grounds are used in prevailing majority of cases when dismissal is effected due to ‘disciplinary’ reasons.

6.2.1. Substantive conditions

Termination due to unlawful action when performing the work

As a general rule, an employee can be dismissed by virtue of unilateral decision of an employer only in cases when the former does not behave in a way which can be expected from him having regard to his position and duties in the undertaking. In the case of I.R. v. a/s ‘Aizkraukles banka’ the Supreme Court has pointed out that, in accordance with the Labour Law, Article 50, the relevant criterion for assessment of illegality is whether the employee has performed his employment agreement and carried out his employment duties with such a care which could reasonably be expected, taking into account the

nature of employment duties as well as skills and knowledge necessary for their performance²⁵.

However, not any violation of an employment agreement or internal employment regulations triggers the right of unilateral dismissal on disciplinary grounds. Each case is examined individually and only where the breach is regarded, either by law or a competent authority (i.e., the employer or court), as gross violation, the employer's termination of employment relations is found to be lawful. In other cases, an employer has a right to recourse to other means of disciplinary punishment – reproof or reprimand – set out in the Labour Law, Article 90.

It is important to point out that, in accordance with the Labour Law, Article 101(2), when deciding on termination of employment relations, an employer must consider not only (1) gravity of the violation, but also (2) circumstances in which it has been committed, (3) the employer's personal characteristics and (4) previous work. In case of a labour dispute, these aspects will be examined also by the competent court.

Moreover, such violation has to be committed while carrying out employment duties. Illegal action outside employment does not constitute a valid ground for termination of employment relations. The only exception from this rule may be cases where an employee is unable to carry out employment duties (i.e., perform employment contract) due to his temporary arrest or imprisonment as a result of illegal action or crime. Although there is no relevant case law as yet, such cases could be interpreted as constituting non-performance of the employment agreement as a result of illegal action on the part of the employee.

Among most frequent violations that give rise to termination of the employment agreement on this ground one should note insubordination and disobedience at work, repeated and unjustified failure to attend or arrive punctually for work, insufficient productivity etc.

Unlawful act of the employee

²⁵ Supreme Court Senate Department of Civil Cases, Judgment of 20 October 2004 in the Case No. SKC–570

Pursuant to the Labour Law, Article 101 Section 1, Subsection 2, an employer can terminate an employment agreement if an employee has acted unlawfully when performing its work and thus has lost the employer's confidence.

In comparison with the former Latvian Labour Law Code, application of this ground for termination of legal employment relations is no longer restricted to a specific category of employees which have direct access to the company's funds.

It should be noted that damage caused by an employee to the employer as a result of unlawful action is not an indispensable precondition for terminating employment relations as a result of an illegal action or loss of the employer's confidence. However, it is compulsory to establish that the unlawful action has been of such a character and severity that the employee has indeed lost the employer's confidence. In order to evaluate the loss of confidence, both generally accepted public opinion regarding unlawful action and attitude of the particular employer towards respective employee's violation should be considered.

Thus, in the case of J.E against VAS '*Ceļu satiksmes drošības direkcija*' (Road Traffic Safety Directorate) the court established that contrary to internal provisions governing duties of inspectors for technical registration of vehicles the employee had issued a technical certification sticker without performing adequate examination of the vehicle²⁶. The Supreme Court found dismissal of the employee to be an appropriate disciplinary punishment for the violation committed.

In the case of I.S. against a/s '*Rīgas piena kombināts*' (Riga Milk Processing Establishment) the claimant had sent from her personal computer to a third party considerable amount of business related information concerning her employer²⁷. Although this information was not classified as a commercial secret, the Supreme Court ruled that there are sufficient grounds to regard such information as confidential as it was intended for the employer's internal use and was related to its commercial activities. Consequently, in open market and free competition environment such information could be of interest to companies of a similar profile. The court decided that not only disclosure of information which is expressly termed as a commercial secret could constitute

²⁶ Supreme Court Senate Department of Civil Cases, Judgment of 21 May 2003 in the Case No. SKC-273

²⁷ Supreme Court Senate Department of Civil Cases, Judgment of 19 November 2003 in the Case No. SKC-546

unlawful action. Also disclosure of other information that is prohibited by the job description, internal regulations and other documents binding on the employee, constitutes violation as a result of which the employer's confidence may be lost.

6.2.2. Procedural requirements

In addition to the above material provisions for termination of employment legal relations as a result of disciplinary punishment, the Labour Law, Articles 101 - 112, provides for a certain procedure the employer must observe when terminating the employment agreement. This procedure is laid down with an aim of protection of employees' interests against the employer's possible arbitrariness.

Failure to comply with the prescribed procedure constitutes a sufficient legal basis for declaring the employer's termination notice invalid. However, not every violation or failure to comply with the employer's procedural obligations *per se* triggers invalidity of the termination notice. Its invalidity can be established only in cases where the violation is such as, actually or potentially, may have an impact on the employee's legitimate interests.

Permitted timeframe for termination

As noted above, the decision to terminate employment relations on one of the 'disciplinary grounds' may be adopted within a month of the day on which the employer learned about the breach, but not later than within six months as of the day on which the employee's violation has occurred. The one-month term is extended for a period during which the employee has been temporary incapable to work, has been on a leave (annual leave, study leave or any other leave granted by the employer) or has not carried out employment duties due to any other justified cause.

The above time limit for unilateral termination of employment relations is a preclusive material term. Consequently, where an employer misses one month time period or, for whatever reason, is incapable to issue a termination notice within six months from occurrence of the fact giving rise to unilateral termination of employment relations, the employer's right expires.

Warning

There is no requirement for a prior warning of the employee before termination of employment relations laid down by the Latvian law. Consequently, where there is sufficient evidence that, within the framework of legal employment relations, an employee has committed gross violation serving a good cause for his dismissal, the employer has the right to terminate given employment relations without any prior warning.

Requesting for explanations

The Labour Law, Article 101(2), stipulates that before issuing a termination notice, a written explanation must be requested from the employee. The aim of this legal norm is to provide the employee with a possibility of protection of his rights against the incriminated violation as well as to be heard on the matter at stake.

The request for explanations does not have to be in writing. It must only order a written reply from the employee. It is important also to note that Latvian law does not require that the request for written explanations should directly refer to the intention of the employer to terminate the employment agreement. However, the explanation request must require the employee's clarification on all those substantial matters that will subsequently serve as grounds for termination of the employment agreement.

In the case of E.B. against Jūrmala City Council and Jūrmala School Board, the Supreme Court established that the law does not require requesting for an explanation directly before notifying or in direct regard to the intended termination notice²⁸. In the given case E.B. was already requested to and provided explanations several times during the process of examination of his activities. The Supreme Court also made it clear that the Labour Law does not provide for any particular content of such explanations.

Similarly, in the case of L.D. against State Land Service, the employee had provided explanations for several times during internal investigation, but refused to provide explanations after completion of investigation²⁹. Consequently, the Supreme Court concluded that the employer had acquired enough information for evaluation of the

²⁸ Supreme Court Senate Department of Civil Cases, Judgment of 11 February 2004 in the Case No. SKC–60

²⁹ Supreme Court Senate Department of Civil Cases, Judgment of 28 January 2004 in the Case No. SKC–38

violation, and failure to give written explanations in cases when an employee has had a possibility to give them, but has refused to do so, cannot be considered as a violation of Article 101(2) of the Labour Law.

Reasoning of termination notice

The Labour Law, Article 102, sets out the employer's obligation to inform the employee in writing about the reasons on which the termination notice is based. Consequently, it is not sufficient to indicate only legal grounds. Particular factual circumstances must also be made known to the employee in the event of termination of legal employment relations. Moreover, these circumstances must correspond to the legal basis of the termination notice. Such factual circumstances laying a foundation for a termination notice are usually indicated in the very termination notice. However, they can also be mentioned in a separate document conveyed to the employee before or together with the termination notice (for example, the statement of internal investigation, provided there is reference to such document in the termination notice).

The Labour Law does not specify how detailed the description of such factual circumstances must be.

In the case of J.Z. against National Opera of Latvia the Supreme Court established that the Labour Law does not require a detailed description of the conditions substantiating termination notice of the employment agreement³⁰. Only in a case of dispute the employer is obliged to prove in detail that the termination notice is legally well grounded and has been issued in compliance with the prescribed procedure. It is sufficient that in the termination notice committed breaches are explained in general. In the given case the court found that the general statement 'changes in work organization of artistic management staff' did not violate the Labour Law.

However, in the case of R.K. against a/s 'Latvijas Zoovetapgāde' the Supreme Court pointed out that, since no conditions substantiating the termination notice and indicating violations committed by the employee were mentioned, the court is unable to adjudge on

³⁰ Supreme Court Senate Department of Civil Cases, Judgment of 11 September 2004 in the Case No. SKC-382

the basis of what violations the employee was dismissed and declared the termination notice null and void³¹.

Consequently, the conditions on which the termination notice is being based should be indicated to such extent as to enable an employee or a competent authority to verify its correctness. Courts are not entitled to take into account conditions that have not been mentioned in the termination notice or do not derive from it.

Involvement of the employees' representatives

The Labour Law, in Article 110, stipulates that in case of termination of legal employment relations on 'disciplinary grounds' with an employee who is a labour union member, the employer is under obligation to obtain a prior consent from the respective labour union. This provision does not apply when the employment agreement is terminated as a result of being under influence of alcohol, narcotic or toxic substances.

The Labour Law does not require an employee to inform the employer concerning his membership. Therefore, for this purpose of termination of legal employment relations, before termination notice is issued, the employer has to request the employee regarding his labour union membership. According to the Personal Data Protection Act membership in a labour union is protected as sensitive personal data, which can be disclosed only with the employee's consent.

A negative answer by the employee, even if it is false, constitutes sufficient legal basis for the employer to assume that the employee is not a labour union member.

Upon requesting the employee concerning his labour union membership, the Labour Law does not put the employer under an obligation to inform the employee about the eventual termination notice. However, according to the case law, an employee's labour union membership has to be established as at the moment of terminating the employment agreement, but not – at the expiry of the notice period³².

³¹ Supreme Court Senate Department of Civil Cases, Judgment of 20 October 2004 in the Case No. SKC–557

³² Supreme Court Senate Department of Civil Cases, Judgment of 6 October 2004 in the Case No. SKC–515

Failure to request for such information does not constitute gross procedural violation making the termination notice *per se* null and void, unless the employee is a labour union member.

In case a labour union has refused to give its consent, the legal employment relations can be terminated by the court. The employer has a right to bring a claim concerning terminating of the employment agreement within one month from receipt of the labour union's consent. However, where the labour union fails to provide the employer with an immediate reply within one week, the employer may assume that the labour union has consented to the termination of the employment agreement and has the right to issue the respective termination notice within one month from the day when the term for delivery of the labour union's reply has expired.

Termination notice period

The termination notice period is a time period after the termination notice has been issued, during which the employer is still under an obligation to employ the employee and pay remuneration, providing the employee with adequate breaks necessary for looking for a new job.

The Labour Law provides for three different termination notice periods, unless the employment agreement or collective agreement provides for a longer period or both the employer and the employee have agreed on a shorter period:

- termination with immediate effect;
- 10 days;
- one month.

Regarding termination of employment relations on 'disciplinary grounds', the employer has a right to terminate them with immediate effect only (1) where the employee has acted unlawfully and therefore has lost the employer's confidence and (2) where the employee has been under the intoxication of alcohol, illegal drugs or toxins when performing the work. In all other cases the employer must observe the 10-day termination notice period.

It shall be noted that, upon request of the employee, the termination notice period does not include time when the employee has been temporarily incapable.

Revocation of the employer's termination notice

The Labour Law Article 103 stipulates that it is the employee who may grant the employer the right to revoke its termination notice once it has been issued, unless such right is granted to the employer by a collective agreement or individual employment agreement. In one of its judgments the Supreme Court made it clear that the employer can not unilaterally, without the employee's consent revoke the termination notice after it has been challenged before the court, and thus only the court can declare it invalid³³.

6.2.3. Effects of the dismissal

Termination of the employment relationship

Legal employment relations are terminated as a result of the dismissal. Legal employment relations are usually terminated at the expiry of the termination notice period.

Severance pay

Latvian Labour Law does not provide for any severance pay in cases where legal employment relations are terminated on any of the 'disciplinary grounds'.

Unemployment benefit – waiting period of two months

In case employment relations are terminated on the grounds that the employee has committed a breach, the employee is entitled to the unemployment benefit when he/she has filed the necessary documents with State Social Insurance Agency, but not sooner than two months after the day when the status of the unemployed has been obtained. The two-month waiting period is regulated by Article 13 Section (1), Subsection 2) of Unemployment Insurance Law. The amount of the unemployment benefit is determined by taking into account the length of the social insurance period and the average of the person's insurance contribution salary (please see Section 4.3 of the Report above).

Sickness insurance

As explained above in Section 4.3 of the Report, sickness insurance cover by state social insurance scheme relates to an insured employee or a self-employed person. Therefore, in case a person becomes unemployed after resignation from employment, the person is not entitled to the regular public sickness insurance cover. If the employer has entered into private health insurance schemes for its employees, such health insurance cover usually

³³ Supreme Court Senate Department of Civil Cases, Judgment of 6 October 2004 in the Case No. SKC-514

follows the validity period of the employment agreement. Dismissal therefore has no special impact on the matters related to sickness insurance, apart from the general consequences which are caused by the fact of termination of the employment relations as such.

6.2.4. Remedies

The burden of proof

According to the Labour Law, Article 125, in cases of dismissal the employer always bears the burden to prove, meaning that it must prove that the termination notice of the employment agreement is legally justified and corresponds to the prescribed procedure.

Legal consequences of unlawful dismissal

Upon terminating the employment agreement the employer should take into account that the employee has the right to bring action to the court on declaring the employer's termination notice null and void within one month from the day of its receipt.

If the employer's termination notice is found not to be legally well grounded or the procedure for issuing the termination notice has been violated, the court shall declare the termination notice null and void and shall reinstate the employee to his former position. In cases where an employee does not want to continue his employment relations with his former employer, he has a right to request termination of employment relations by a court decision.

Compensating damages to the employee

The employer is obliged to compensate the employee's damages for compulsory absence from work that have been caused as a result of unlawful termination of employment relations. The damages for compulsory absence from work are calculated from and constitute employee's average remuneration for the whole period of compulsory absence.

Basis of the claim

The court adjudges regarding the subject-matter of the claim stated in the claim and on the basis indicated in the claim, without exceeding the limits of the claim (Article 192 of the Civil Procedure Law, hereinafter – CPL). Before examination of the case on the merits the plaintiff is entitled to amend the basis or the subject-matter of the claim, or to

extend the scope of the claim in writing (CPL Article 74 Section 3 Subsection 3). The court of appeals, in its turn, examines only those claims that have been examined at the court of first instance and only within the scope they have been appealed, besides no amendments to the subject-matter or basis of the claim, or inclusion of new claims that had not been brought to the court of first instance, are permissible (CPL Article 418 Section 1 and Article 426 Section 2).

Term of the claim

In the case³⁴ of J.P. claim against Special Boarding School of Ruba the plaintiff received the employer's notice on 9 September 2002, was dismissed on 10 October, but brought the claim on re-establishment on 12 November. The Senate indicated in the judgment: 'In the cases when an employee is dismissed on the grounds of the employer's notice declaration of the employer's notice invalid is the precondition for their re-establishment to the former position (Article 124 of the Labour Law). As the notice has not been disputed in accordance with the procedure and within the term stipulated by the law, the court justifiably rejected the claim on re-establishment to the position.'

Article 123 of the Labour Law stipulates an option to renew the delayed term of claim through establishment of a special procedure. In the case³⁵ of M.P. claim against Bulduri Hospital the plaintiff requested renewal of the delayed term of claim only for the court of first instance. The Senate indicated in this regard that Article 123 of the Labour Law is the norm of substantial law and establishes a special procedure for renewal of the delayed term of claim, which excludes the possibility to apply the norms of the Civil Procedure Law on renewal of the delayed terms, as the term of claim stipulated in Article 122 cannot be considered as a procedural term. Article 123 of the Labour Law states that the application for renewal of the delayed term of claim should be filed with the court no later than within two weeks from the date on which the basis justifying the delay of the term of claim expired, simultaneously raising the claim stated in Article 122. If the employee has not requested renewal of the delayed term of claim or if such application has not been filed with the court together with the claim (or included in it), there are no legal grounds for renewal of the delayed term and thus the raised claim should be rejected.

³⁴ Supreme Court Senate Department of Civil Cases, Judgment of 17 December 2003 in the Case No. SKC-645

³⁵ Supreme Court Senate Department of Civil Cases, Judgment of 14 July 2004 in the Case No. SKC-351

Re-establishment to the position and collection of damages for compulsory absence from work

According to Article 124 Section 2 of the Labour Law declaring the employer's notice invalid is the basis for re-establishment of the employee to the position, while re-establishment to the position in accordance with Article 125 Section 1 is the basis for collection of damages for the whole period of compulsory absence from work. However, in the court practice there are certain restrictions to application of these sections.

In order to correctly adjudge a claim of re-establishment to the position the courts should also evaluate those legally significant facts that have occurred already after dismissal of the employee and bringing the claim to the court.

Thus, in the case³⁶ of E.M. claim against BO SIA 'Olimpiskais centrs 'Ventspils'' the plaintiff was immediately re-established to the position under a court judgment on 10 October 2002. On 25 January 2003 employment relations between the parties were terminated on the grounds of Article 100 of the Labour Law. This fact notwithstanding, Kurzeme Regional Court when examining this case on 13 May 2003 as the defendant's claim of appeal, satisfied the claim on re-establishment to the position. The Senate indicated in this case that although the dismissal presumably could have been unlawful, the later notice by the employee and termination of the employment agreement on those grounds is a legal obstacle for satisfaction of the claim on re-establishment to the position, as the basis for re-establishment to the position has actually ceased to be, thus the claim in this part, as well as in the part on collection of damages for compulsory absence from work should be rejected.

If the employee is re-established to the position under the judgment of the court of first instance and the employer executes this judgment, then, when this case is examined under appeal, there are no grounds to re-establish the employee to the position repeatedly, or to collect damages for compulsory absence from work until the date of the session of the court of second instance³⁷. The same refers to cases when the employee no longer requests re-establishment to the position, but requests termination of the employment

³⁶ Supreme Court Senate Department of Civil Cases, Judgment of 8 October 2003 in the Case No. SKC-440

³⁷ Supreme Court Senate Department of Civil Cases, Judgment of 11 August 2004 in the Case No. SKC-380

agreement with a court judgment, and when the judgment favourable for the plaintiff is not appealed in this part.³⁸

In order to adjudge correctly regarding collection of damages for compulsory absence from work the courts should establish that the absence from work had a compulsory character.

State-ensured legal assistance for qualifying applicants

A general law (State Ensured Legal Assistance Law) provides entitlement of qualifying applicants to state-paid legal assistance (e.g. to persons who are unable to ensure protection of their rights, either fully or partially, due to their financial situation and income levels). Such assistance may well be required by a qualifying applicant in case of challenging the dismissal notice.

6.2.5. Suspension of the effects of the dismissal

No suspension procedures

In Latvia there are no regulated suspension procedures.

6.2.6. Restoration of employment

Re-establishment to the former position

The employee must be reinstated in his or her previous work position if the court satisfies the employee's application for challenging of the termination notice and request concerning restoration of employment. Further to the employee's request the court may rule that the court judgement is enforceable immediately (i.e. despite of the first instance court ruling appeal by the employer).

The employer's consent not necessary

At restoration of employment the employer's consent is not necessary. The employer may not excuse itself by referring to the fact that another employee is employed in the position or that the relevant employment position is liquidated. According to Labour Law, re-establishment of the former employee in the post serves as sufficient grounds to terminate employment relations with the new employee who was contracted for the post.

³⁸ Supreme Court Senate Department of Civil Cases, Judgment of 9 June 2004 in the Case No. SKC-339

However, in situations where the employment position is liquidated, the employer is obliged either to create the liquidated position anew or to reach another solution for continuation of employment relations with the reinstated employee.

Delay in restoration of employment

If the employer delays the execution of the ruling on re-establishment of the employee in the former position, the employee shall be paid average earnings for the whole period of delay from the date of the ruling until the day of its execution.

6.2.7. Penalties

Administrative liability

Administrative Penalties Law stipulates general liability provisions for breach of legal acts governing employment relations. The applicable administrative penalty varies from a warning to monetary penalty in the amount of up to 250 Latvian lats (for employers – private individuals) or 500 Latvian lats (for employers – legal entities). This penalty may be applicable also due to breaches of legal acts governing employment relations during dismissal process.

Criminal liability

Latvian Criminal Code regulates criminal liability for an intentional failure to execute a court judgement. Criminal liability might therefore apply in case the employer intentionally fails to execute (or intentionally delays execution of), for instance, court ruling on re-establishment of employee to the former position. The criminal penalty on such occasions is monetary penalty in the amount of up to 60 minimum wages (i.e. 60 x 90 LVL (minimum wage) = 5400 Latvian lats).

6.2.8. Collective agreements

In Latvia collective agreements usually do not specify additional rules concerning grounds of dismissal due to misconduct. The collective agreement may however provide for a longer termination notice period in comparison to the notice periods regulated by law.

6.3. Dismissal at the initiative of the employer for reasons related to the capacities or personal attributes of the employee, excluding those related to misconduct

Legal provisions – particular subsections of Article 101, Section 1, Labour Law

Labour Law Article 101 (Notice of Termination by an Employer) Section 1, Subsections 6 and 7 list the instances when the employer is entitled to unilaterally terminate employment relations with the employee for reasons related to the capacities or personal attributes of the employee, excluding those related to misconduct. These instances are the following:

- the employee lacks adequate occupational competence for performance of the contracted work;
- the employee is unable to perform the contracted work due to his or her state of health and such state is certified with a doctor's opinion.

6.3.1. Substantive conditions

Lack of adequate occupational competence

Latvian Labour Law allows the employer to unilaterally terminate employment relations with an employee if the employee lacks adequate occupational competence for performance of the contracted work. The employer has burden to prove the validity of the ground, which is not a straightforward task. It is therefore not very usual for employers in Latvia to use the ground of inadequate occupational competence when terminating employment relations with employees.

Inability to perform the contracted work due to one's state of health

Another ground for termination which relates to personal attributes of the employee, excluding those related to misconduct, concerns termination due to the employee's inability to perform the contracted work due to his or her state of health and provided that a doctor's opinion confirms this. In order to clarify the grounds for dismissal pursuant to the said grounds, the employer should ensure possibility of medical examination for the employee. It is clear that temporary inability to perform the work does not qualify as a ground for dismissal. It is only permanent inability to perform the work in a foreseeable future which justifies such termination. It might also be the case that the employee himself or herself submits a doctor's statement concerning inability to perform the work and thus informs the employer on the ground for termination of employment relations. In

such situations the employer should use the particular health status related dismissal ground (which requires severance payment) and not termination due to the employee's resignation (which does not require severance payment).

6.3.2. Procedural requirements

Involvement of the employees' representatives

In case of termination of employment relations on these grounds with an employee who is a labour union member, the employer is under obligation to obtain prior consent from the respective labour union. For more details please see development under Section 6.2.2 of the Report above.

Termination notice period

The termination notice period in case of termination of employment relations due to (1) the employee's lack of adequate occupational competence or (2) his or her state of health, the termination notice period is one month.

Reasoning of notice

The employer is obliged to inform the employee in writing about the reasons on which the termination notice is based. Consequently, it is not sufficient to indicate only legal grounds in the written notice, but the employer must clarify also the underlying circumstances of the termination.

6.3.3. Effects of the dismissal

Termination of the employment relationship

As a result of the dismissal, legal employment relations are terminated. Legal employment relations are usually terminated at the expiry of the termination notice period.

Severance pay

If termination of employment relations is based on the employee's (1) lack of adequate occupational competence or (2) state of health, the employer is obliged to pay severance to the employee. The amount of the severance pay depends on the length of the employment relations that the employer had with the particular employee, namely:

- one month average earnings if the employee has been employed by the relevant employer for less than 5 years;

- two months average earnings if the employee has been employed by the relevant employer for 5 to 10 years;
- three months average earnings if the employee has been employed by the relevant employer for 10 to 20 years; and
- four months average earnings if the employee has been employed by the relevant employer for more than 20 years.

All amounts of money pertaining to the employee from the employer – the last salary and compensation for unused vacation days, should be disbursed on the day of termination of employment relations. The employer's failure to make these payments does not impact the validity of the termination of employment relations but the employer may be ordered by a court ruling.

Unemployment benefits – no waiting period

Dismissal due to the employee's (1) lack of adequate occupational competence or (2) state of health does not, by itself, trigger any restrictions related to access of unemployment benefits. The same is true in relation to retirement pensions.

The amount of the unemployment benefit is determined by taking into account the length of the social insurance period and the average of the person's insurance contribution salary (please see Section 4.3 of the Report above).

Sickness insurance

As explained in Section 4.3 of the Report above, sickness insurance cover by state social insurance scheme relates to an insured employee or a self-employed person. Therefore, in case a person becomes unemployed after dismissal, the person is not entitled to the regular public sickness insurance cover. If the employer has entered into private health insurance schemes for its employees, such health insurance cover usually follows the validity period of the employment agreement. The form of resignation as a ground for termination of employment relations therefore has no special impact on the matters related to sickness insurance, apart from the general consequences which are caused by the fact of termination of the employment relations as such.

6.3.4. Remedies

See Section 6.2.4 of the Report above. The same comments apply.

6.3.5. Suspension of the effects of the dismissal

No suspension procedures

In Latvia there are no regulated suspension procedures.

6.3.6. Restoration of employment

See Section 6.2.6 of the Report above. The same comments apply.

6.3.7. Penalties

See Section 6.2.7 of the Report above. The same comments apply.

6.3.8. Collective agreements

In Latvia collective agreements usually do not specify additional rules concerning grounds of dismissal for reasons related to the capacities or personal attributes of the employee, excluding those related to misconduct. The collective agreement may however provide for a longer termination notice period in comparison to the 30 day notice period required by law.

6.4. Dismissal for economic reasons

Legal provisions – particular subsections of Article 101, Section 1, Labour Law

Labour Law Article 101 (Termination Notice by an Employer) Section 1, Subsections 8, 9 and 10 list the instances when the employer is entitled to terminate employment relations with an employee unilaterally for economic or other reasons which are not related to the employee's capacities, personal attributes or misconduct. These instances are the following:

- an employee who previously performed the specific work has been reinstated at office;
- the number of employees is being reduced (redundancy case);

- an employer – a legal entity or partnership – is being liquidated.

6.4.1. Substantive conditions

Reinstatement of the former employee to the same position

In case a former employee is reinstated to his or her former position, the new (current) employee may be dismissed. However, the former employee may be dismissed only where, taking into account his skills and qualifications, there is no possibility to offer him another position. Thus, before terminating the employment relations on the grounds of reinstatement of the former employee, the employer is under an obligation to evaluate all the possibilities of offering the former employee a new position in the undertaking. Failure to do so results in a serious procedural breach triggering invalidity of the termination notice.

In practice, this ground most often is used in cases when an employee is reinstated to his former position by a court ruling or due to a settlement approved in court.

Redundancy

Dismissal on the grounds of redundancy as a principle is deemed to be '*ultima ratio*'. Article 101 Section 1 Subsection 9 of the Labour Law stipulates redundancy as a legal basis for the employer's notice, while Article 104 Section 1 of the Labour Law elaborates on its definition. According to the Labour Law, redundancy is regarded as termination of an employment agreement due to reasons that are not related to the employee's conduct or abilities, but which are well-grounded by urgent business, organizational, technological or similar measures carried out within an undertaking. The case law of the Supreme Court indicates that this ground for termination of employment relations is applicable where, as a result of business-related, organizational, technological or similar activities carried out within an undertaking, it is objectively impossible to maintain the employee's previous employment terms and conditions³⁹.

Pursuant to the interpretation of the Labour Law followed by the Supreme Court, an employer is entitled to terminate employment relations with an employee on the grounds of redundancy also in cases where the employer has shifted (rearranged) tasks (employment duties) in the undertaking or, along with closing down of several positions

³⁹ Supreme Court Senate Department of Civil Cases, Judgment of 22 October 2003 in the Case No. SKC-518;

there are new offices established⁴⁰. It means that such instances cannot preclude termination of employment relations on the basis of Article 101 Section 1 Subsection 9 of the Labour Law provided there exists no possibility of offering the employee other position within the undertaking. This provision cannot be interpreted as meaning that only where the total number of employees within an undertaking is actually being reduced, Article 101 Section 1 Subsection 9 of the Labour Law is applicable.

In the light of the above, courts usually assess whether there are business-related, organizational, technological or similar activities carried out within an undertaking that could serve as a legal ground for termination of the employment relations. Once it is established that such activities have been carried out, the court does not rule on their necessity or suitability, which rests solely upon the discretion of the employer. Thus, in the case of I.K. v. SIA 'Vides projekti' the plaintiff requested invalidity of the employer's order according to which changes were introduced in the company's staff list and position titles, including closing down of the plaintiff's position of project coordinator, during the period of her vacation⁴¹. The Senate, when examining this case, found that the lower instance court had acted beyond its competence when declaring the employer's order invalid because it had judged a matter referring to the company's business activities that are beyond the court's control.

Winding up (liquidation) of the employer

The Labour Law allows termination of employment relations with an employee on the grounds that the employer – legal entity or partnership – is being wound up (liquidated). Termination on these grounds is possible after the shareholders of the corporate entity have resolved on the winding up of the company.

6.4.2. Procedural requirements

Priority to remain employed in redundancy cases

The Labour Law lists those categories of employees who have priority over other employees in continuing their employment in case of redundancy.

These are employees with better results in work and higher qualifications.

If there is no such difference, then privileges will be enjoyed by:

⁴⁰ Supreme Court Senate Department of Civil Cases, Judgment of 13 August 2003 in the Case No. SKC–335 and Judgment of 5 February 2003 in the Case No. SKC–69;

⁴¹ Supreme Court Senate Department of Civil Cases, Judgment of 12 May 2004 in the Case No. SKC–261

- employees who have been employed by the respective employer for a comparatively longer period of time;
- employees who have suffered an accident at their current employment or have fallen ill with a professional disease;
- employees who have children under 14, employees who have two or more dependants;
- employees whose family members have no constant income;
- employees who are handicapped;
- employees who have participated in the elimination of the consequences of the accident in the Chernobyl electric power station;
- employees who have less than five years before retirement;
- employees who are professionally trained in any educational establishment without interruption of employment; and
- employees who have been unduly repressed.

Involvement of employees' representatives

In case of termination of employment relations due to economic reasons with an employee who is a labour union member, employer is under obligation to obtain prior consent from the respective labour union. For more details please see development under Section 6.2.2 of the Report above.

Termination notice period

The termination notice period in case of dismissal due to (1) restoration of the former employee to the same position, (2) redundancy or (3) liquidation of the employer, the termination notice period is one month.

Reasoning of notice

The employer is obliged to inform the employee in writing about the reasons on which the termination notice is based. Consequently, it is not sufficient to indicate only legal grounds in the written notice, but the employer must clarify also the underlying circumstances of the termination.

6.4.3. Specific requirements for collective dismissals

Criteria of collective redundancy

Pursuant to the Labour Law, Article 105, collective redundancy is a specific case of reduction in the number of employees whereby the number of employees made redundant over a period of 30 days is:

- at least five employees if the employer normally employs more than 20 but less than 50 employees in the undertaking;
- at least 10 employees if the employer normally employs more than 50 but less than 100 employees in the undertaking;
- at least 10 per cent of the number of employees if the employer normally employs at least 100 but less than 300 employees in the undertaking; or
- at least 30 employees if the employer normally employs 300 and more employees in the undertaking.

In calculating the number of employees to be made redundant, one should also take into account cases where employment relations are being terminated not by the employer's termination notice but instead by one or more reasons not related to the conduct or capacity of the individual workers concerned and which have been facilitated by the employer.

Exceptions

The Labour Law, Article 105, Section 3 provides for two exceptions to the general collective redundancy provisions. These legal norms are not applicable to:

- employees employed by public administrative bodies and
- employees employed in the crews of seagoing vessels.

Matters related to calculating the number of redundant employees

In comparison with the Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, collective redundancies effected under employment agreements concluded for limited periods of time or for specific tasks are included when calculating the number of redundant employees for the purpose of applying specific rules of collective redundancy.

Consultations with the employees' representatives

According to the Labour Law, Article 106, where an employer is contemplating collective redundancies, it is under an obligation to begin consultations with the workers'

representatives in good time with a view to reaching an agreement. Such consultations shall include the number of employees subject to the collective redundancy, the process of the collective redundancy and the social guarantees for the employees to be made redundant. The employees' representatives must be effectively ensured an opportunity to submit their proposals. In particular, they must be informed in writing as to the reasons of the collective redundancy, the number of employees to be made redundant including the occupation and qualifications of such employees, the number of employees normally employed by the undertaking, the time period within which it is intended to carry out the collective redundancy and the procedures for calculation of severance pay.

The redundancy procedure shall be equal irrespective of whether the decision on collective redundancy is taken by an employer or a dominant undertaking of the employer. An objection that the failure to fulfil the duty of information, consultation and notification is related to the fact that the dominant undertaking has not provided the necessary information, is not permitted.

As a general rule, during the consultation procedure the employer and employees' representatives shall examine all the possibilities of avoiding the collective redundancy or of reducing the number of employees to be made redundant. Moreover, consultations shall also involve mitigation of the consequences of such redundancy by having recourse to social measures that are aimed at the aid for redeploying or retraining employees made redundant.

Involvement of State Employment Agency and the local municipality

Collective redundancy procedure involves not only employees' representatives but also a public authority – the State Employment Agency - and the local municipality. Thus, pursuant to the Labour Law, an employer which contemplates carrying out collective redundancy shall, not later than 60 days before, notify in writing thereof the State Employment Agency and the local government of the territory where the undertaking is located. The notification shall include the name, surname (title) of the employer, location and type of activity of the undertaking, reasons for the intended collective redundancy, the number of employees to be made redundant stating the occupation and qualifications of each employee, the number of employees normally employed by the undertaking and the time period within which it is intended to carry out the collective redundancy, as well as it shall provide information regarding the consultations with employees'

representatives. The employer shall send a copy of the notification to the employees' representatives. The State Employment Agency and the local government may also request other information from the employer pertaining to the intended collective redundancy.

The collective redundancy may be effected not earlier than 60 days after respective notification has been sent to the State Employment Agency unless the employer and the employees' representatives have agreed on a later date for commencing the collective redundancy. In exceptional cases the State Employment Agency may extend this time limit for a period up to 75 days.

Last but not least, it shall be noted that as yet there is no case law as to whether the failure by an employer to comply with the specific procedure for collective redundancy may be legal grounds for invalidity of respective termination notices. Several scholars have different points of view on this issue concerning whether non-compliance with this procedure should be regarded as sufficiently serious violation of the termination procedure.

6.4.4. Effects of the dismissal

Termination of the employment relationship

As a result of the dismissal, legal employment relations are terminated. Legal employment relations are usually terminated at the expiry of the termination notice period.

Severance pay

If dismissal occurs due to (1) restoration of the former employee to the same position, (2) redundancy, or (3) due to liquidation of the employer, the employer is obliged to pay severance to the employee. The amount of the severance pay depends on the length of the employment relations that the employer had with the particular employee, namely:

- one month average earnings if the employee has been employed by the relevant employer for less than 5 years;
- two months average earnings if the employee has been employed by the relevant employer for 5 to 10 years;
- three months average earnings if the employee has been employed by the relevant employer for 10 to 20 years; and

- four months average earnings if the employee has been employed by the relevant employer for more than 20 years.

All amounts of money pertaining to the employee from the employer – the last salary and compensation for unused vacation days, should be disbursed on the day of termination of employment relations. The employer's failure to make these payments does not impact the validity of the termination of employment relations but the employer may be ordered by a court ruling.

Unemployment benefits – no waiting period

Dismissal due to (1) restoration of the former employee to the same position, (2) redundancy, or (3) due to liquidation of the employer does not, by itself, trigger any restrictions related to access of unemployment benefits. The same is true in relation to retirement pensions. The amount of the unemployment benefit is determined by taking into account the length of the social insurance period and the average of the person's insurance contribution salary (please see Section 3.4 of the Report above).

Sickness insurance

As explained in Section 3.4 of the Report above, sickness insurance cover by state social insurance scheme relates to an insured employee or a self-employed person. Therefore, in case a person becomes unemployed after dismissal, the person is not entitled to the regular public sickness insurance cover. If the employer has entered into private health insurance schemes for its employees, such health insurance cover usually follows the validity period of the employment agreement. The form of resignation as grounds for termination of employment relations therefore has no special impact on the matters related to sickness insurance, apart from the general consequences which are caused by the fact of termination of the employment relations as such.

6.4.5. Remedies

See Section 6.2.4 of the Report above. The same comments apply.

6.4.6. Suspension of the effects of the dismissal

No suspension procedures

In Latvia there are no regulated suspension procedures.

6.4.7. Restoration of employment

See Section 6.2.6 of the Report above. The same comments apply.

6.4.8. Administrative or criminal penalties

See Section 6.2.7 of the Report above. The same comments apply.

6.4.9. Collective agreements

In Latvia collective agreements usually do not specify additional rules concerning redundancies. The collective agreement may however provide for a longer termination notice period in comparison to the notice periods required by law.

6.4.10. Special arrangements

6.4.10.1. Insolvency

Insolvency until recognition of bankruptcy is not per se a valid cause for termination of employment relations

The mere fact that a company has been declared insolvent cannot serve as a valid reason for termination of employment relations with an employee (the situation differs however after the company is declared bankrupt). In an insolvency situation where it is not economically reasonable to continue business activities of the insolvent company (or the scope of the activities must be reduced) the insolvency administrator may opt for termination of employment relations with the employees by quoting redundancy as legal grounds. Consequently, the rules on redundancies apply without any specific restrictions. Other regular grounds for termination of employment relations may also be applied within insolvency proceedings.

In case it is not possible to settle with the creditors or to recover the insolvent entity, the court resolves to declare the entity bankrupt upon insolvency administrator's application. A bankrupt entity shall be wound up (liquidated). Therefore, after declaration of

bankruptcy the employment relations with employees may be terminated on the grounds of liquidation of the employer.

Employee claims a guarantee fund

Law 'On Protection of Employees in Case of Corporate Insolvency' provides for financial guarantees for the employees of an insolvent company whose employment related income has not been duly paid. This law implements Directives of the Council and the Parliament concerning approximation of laws in relation to protection of employees within corporate insolvency. The law does not however include any particular protective regulation concerning ways of terminating employment relations during the corporate insolvency process.

The law provides that employee claims guarantee fund is formed primarily from payments of state duty named *business risk state duty*. Every corporate entity who may be recognised insolvent pays the state duty on annual basis. The employee claims guarantee fund is established with the purpose of securing the employment related claims of the employees, namely claims concerning payment of:

- salary;
- vacation pay;
- other justified absence pay;
- severance pay due to termination of employment relations;
- compensation of damage (injury) due to accident at work or occupational disease;
- employer's share of the mandatory social security contributions.

The employee claims are satisfied in the following amounts from the resources of the fund:

- salary for the last three months of employment within a 12-month period before recognition of the employer's state of insolvency;
- vacation pay within a 12-month period before recognition of the employer's state of insolvency;
- other justified absence pay within a 12-month period before recognition of the employer's state of insolvency;
- severance pay due to termination of employment relations in the amount stipulated by law unless the employment agreement or collective agreement requires payment of severance in higher amount;

- compensation of damage (injury) for all the unpaid period and for three years in advance.

The procedures for requesting and approving of the payments are regulated by the Cabinet of Ministers regulations.

6.4.10.2. Transfer of the firm

The legal provisions

The legal provisions concerning transfer of an undertaking are included in Chapter 28 of the Labour Law. This Chapter is developed pursuant to the Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses.

Concept of the transfer of an undertaking

The Labour Law provides for special protection of the employee in the event of transfer of the undertaking (firm). The concept of transfer of an undertaking is defined in Article 117 of the Labour Law and clarifies that this entails:

- transfer of an undertaking or its autonomous part to another person on the basis of an agreement (a regular civil agreement is referred to here);
- merger or division of commercial companies (reorganisation of a corporate entity pursuant to regulations of commercial laws is meant by this reference).

It should be noted that reorganisation of state administrative institutions or municipalities, as well as transfer of administrative functions of one institution to another institution shall not be regarded as transfer of an undertaking.

Duty to provide information to the acquirer

Information to the acquirer of the undertaking. The Law provides that the transferor of an undertaking has a duty to inform the acquirer of the undertaking concerning all the rights and duties related to employment relations that are to pass over to the acquirer of the undertaking. However, non-compliance with the said duty has no effect on the transfer of rights and duties and the valid claims of employees.

Information to employees. It is regulated by law that both the transferor and the acquirer of an undertaking have a duty to their employees regarding:

- the (expected) date of transfer of the undertaking,
- the reasons for the transfer of the undertaking,
- the legal, economic and social consequences of the transfer,
- the measures which will be taken with respect to employees.

The above information must be rendered not later than one month before the transfer of the undertaking. As regards the acquirer of an undertaking, they must provide information to the employees not later than one month before the transfer of the undertaking starts to directly affect the working conditions and employment provisions of the employees.

Where it is intended that the transfer of an undertaking will involve organisational, technological or social measures with respect to employees, the transferor and/or the acquirer (depending on the particular case) is obliged not later than three weeks in advance to commence consultations with the employee representatives in order to reach an agreement on such measures and procedures thereto.

Rights pursuant to an employment agreement are transferred to the acquiring person or entity

Rights and duties of the transferor of an undertaking that arise from employment relations applicable at the moment of transfer of the undertaking pass over to the acquirer of the undertaking. In this relation it should be emphasized that transfer of undertaking cannot as such serve as a sufficient ground for termination of employment relations with an employee. If the acquirer of the undertaking implements economical, organisational, technical or other such structural changes in the undertaking which involve reduction of the workforce, the acquirer of the firm may terminate employment relations with an employee or employees but the regular provisions concerning redundancy must be observed on such occasion.

Consequences concerning the collective agreement

After transfer of an undertaking the acquirer is required to continue to comply with the provisions of the effective collective agreement which transfers as well. It should be noted that within a one-year period from the transfer of the undertaking, the provisions of the collective agreement may not be amended to the detriment of employees.

6.4.10.3. Closure of the business

The regulated forms of closing the business are liquidation (winding up) and bankruptcy proceedings. Liquidation of the employer (legal entity) is a valid ground to terminate the employment agreement unilaterally on the initiative of the employer.

It is certainly possible due to economical reasons to terminate conduct of certain business activities, lines of service, etc. But in such occasions (unless the whole legal entity is liquidated) the employers must obey the procedures of terminating employment relations on redundancy grounds.

7. RESIGNATION BY THE EMPLOYEE

This section of the Report concerns resignation by an employee as legal grounds for terminating employment relations.

General notes

The possibility to terminate any type of an employment agreement by resignation of the employee is expressly regulated in Latvian Labour Law. This is a fundamental right of an employee. In protection of the employers one month resignation notice term is introduced. Nevertheless, an employee may resign with immediate effect due to an important reason (e.g. impossibility to continue employment relations due to considerations of morality and fairness).

7.1. Substantive conditions

The legal provision – Article 100 of the Labour Law

The legal regulation concerning unilateral resignation by the employee is primarily included in Article 100⁴² of the Labour Law.

⁴² Section 100 of the Labour Law provides: *‘Notice of Termination by an Employee.*

(1) An employee has the right to give a notice in writing of termination of an employment contract one month in advance, unless a shorter time limit for the giving of a notice of termination is provided by the employment contract or the collective agreement. At the request of the employee, a period of temporary incapacity shall not be included in the term of a notice of termination.

(2) An employee who is employed in paid temporary public works or other work in relation to his or her participation in active employment measures has the right to give notice of termination of an employment contract one day in advance.

(3) The right of an employee to recall a notice of termination shall be determined by the employer, unless such right has been specified by the collective agreement or the employment contract.

No requirement to state the reason of resignation

The employee is not obliged to state the reason of resignation (except if resignation occurs pursuant to Article 100 Section 5 of the Labour Law – see section 7.8 of the Report below).

The employer has no rejection rights

The employer is not entitled to reject the employee's notice concerning termination of the employment relations.

Notice periods

The Labour Law regulates the following notice periods to be observed by the employee:

- 1 month in advance is the general notice term;
- 1 day in advance is a notice term for an employee employed in temporary paid community work (this applies only to those unemployed who are contracted by local municipalities for performance of community work pursuant to Unemployed and Employment Seekers Support Law);
- the resignation notice becomes effective immediately in cases when the employee has an important reason, i.e. any such condition that does not permit continuation of employment relations on the grounds of considerations of moral and decency (Article 100, Section 5 of the Labour Law);
- other notice term if such shorter term is regulated by the employment agreement or collective agreement (contractual regulation of longer notice periods for employees in comparison to statutory periods are not legally valid and are not enforceable).

The notice periods are the same for all employees. There are no different notice periods for 'white collar' and service workers or 'blue collar' workers.

Resignation notice replaced by a mutual agreement

(4) By agreement of an employee and the employer, an employment contract may be terminated also before expiry of the time period for a notice of termination.

(5) An employee has the right to give written notice of the termination of an employment contract without complying with the time limit for a notice of termination specified in this Section if he or she has good cause. Each condition based on considerations of morality and fairness that does not allow the continuation of employment legal relationships shall be regarded as such cause.'

It is certainly possible that after receipt of an employee's resignation notice the employer and the employee agree on mutually beneficial terms that the employee continues to work, for instance, still for three months before the employment relations are terminated. However, then such an agreement would rather qualify as a mutual agreement concerning termination of employment relations and resignation should not be quoted as grounds for termination of employment relations in such a case.

7.2. Desertion of the post

No rules concerning 'tacit resignation'

There are no rules concerning the so called 'tacit resignation' in Latvian Labour Law or in any other legal act regulating employment relations.

Valid cause for dismissal

In case the employee does not appear at his/her workplace or if he/she leaves it without justified reason it would qualify as a material breach of the employment agreement and/or internal working rules. As such, this is a cause of termination pursuant to Labour Law Article 101 Section 1 subsection 1: 'the employee has without justified cause significantly violated the employment agreement or the specified working procedures'. In case dismissal is pursued on these grounds the employer is required to observe the regular termination procedure (e.g. explanations must be requested from the employee prior to termination, the labour union consent (if applicable) must be obtained, a motivated written termination notice must be issued).

7.3. Procedural requirements

Written notice by the employee

Labour Law requires that the resignation notice of the employee is expressed in written form. An oral statement concerning termination of employment relations is therefore not binding. The resignation notice is being drafted in free form and for clarity reasons it should state:

- the employee's intention to terminate the employment relations,
- the addressee (the employer) should be indicated,
- the date as of which the employee wishes to terminate the employment relations may also be indicated.

- the date on which the notice is written should be stated as well.

In addition, the notice must be signed by the employee.

When writing the notice, the employee does not need to indicate the reason why he/she wishes to resign. The employee could write, for instance, *'I wish to terminate the employment relations established on [date] according to [employment agreement data] with [the corporate name of the employer] on my own initiative'*, however, if the employee wishes so, he/she can also indicate the reasons of the resignation. If the employee's intention to terminate the employment relations is not stated in the notice, the document cannot be considered as a termination notice of the employee pursuant to Article 100 of Latvian Labour Law.

Resignation during vacation, sickness leave, etc.

The Labour Law does not restrict the employee from submitting the resignation notice during periods when the employee is not at work (e.g. vacation, sickness, maternity leave).

Submitting the resignation notice to the employer

As a general practice, the employee personally hands over his/her resignation notice to an authorised representative of the employer. Nevertheless, the employee might opt to send his/her resignation notice to the employer via post. Although it is not directly regulated by laws, it follows that the one month prior written notice term commences on the next day after the letter is delivered to the employer so that the employer has the possibility to learn about the contents of the notice (i.e. 'mailbox rule' principle). To provide substantiation of such interpretation it should be noted that one month (or other regulated period) prior written notice period requirement is introduced as a protection of the employer and it should not be shortened due to the postal delivery period. When mailing such important communication as a resignation notice, the employee should preserve evidence of the fact that the letter has been sent (e.g. post office or courier delivery service form) to the registered office of the employer (or residence address if the employer is a private individual). This would serve as evidence, for instance, in case the employer acts to avoid receipt of the letter. The safest way of establishing evidence that the particular document has been sent to the particular legal entity or private individual is to apply to a notary public with a request to attest and send the particular statement. Such

a procedure certainly calls for more expenses (approximately EUR 15) than a regular letter sent via post.

Temporary disability period

If the employee has submitted a resignation notice, the employment relations terminate also during a temporary disability period of the employee (i.e. the temporary disability period does not automatically suspend the flow of resignation period). The time of temporary disability (sickness) is included in the notice period only if the employee requests so. A corresponding written request should be submitted to the employer before the last date of the resignation notice period. If such request is submitted after the resignation notice period when the employment relations are already terminated, the request would have no legal consequences.

Termination ahead of notice term

Upon agreement between the employee and the employer the employment agreement may also be terminated prior to the expiry of the employee's notice period. Thus, if so agreed, the employee may leave before expiry of the notice period.

Granting time for finding another job

If the employee has filed a written resignation notice, the employer is obliged to grant the employee time for finding another job, if the employee requests so. The employer is required to comply with the following provisions:

- time for finding the job should be granted within the agreed hours of the employee;
- the employee's salary should be retained for this period;
- the time and the scope of the retained salary is specified upon agreement between the employee and the employer, except in the case it is determined in the collective agreement or the employment agreement.

7.4. Effects of the resignation

Termination of the employment relations

The employment relations are terminated in consequence of resignation by the employee.

Revocation of the notice

The employee is not entitled to unilaterally revoke the resignation notice, except in the case such revocation right is stipulated by the collective agreement or the employment agreement. If there is no agreement on the employee's right to revoke the notice, such right is determined by the employer.

Dismissal during the resignation notice period

During the resignation notice period the employee is obliged to fulfil his/her employment duties with respect to the employer. In the event of breach the employer is not prohibited from dismissing the employee pursuant to the relevant grounds of the Labour Law. However, the employee must then act to issue the unilateral termination notice within the running of the resignation notice period. After lapse of the resignation notice period the employer is not entitled to change the grounds of termination of the employment relations from resignation to dismissal by issuing a subsequent termination notice. Court practice confirms this statement⁴³.

Severance pay

If the employee issues a resignation notice, the employer is not obliged to pay severance to the employee, except in the cases when the employee's notice is based on an important reason (Article 100, Section 5 of the Labour Law). The amount of the severance pay depends on the length of the employment relations that the employer had with the particular employee. The amounts are regulated by Article 112 of the Labour Law⁴⁴.

All amounts of money pertaining to the employee from the employer – the last salary and compensation for unused vacation days, should be disbursed on the day of employment

⁴³ For instance, Supreme Court Senate Ruling of 16 August 2000 in case No.SKC-314.

⁴⁴ Labour Law Section 112 (Severance Pay) provides: *'If a collective agreement or the employment contract does not specify a larger severance pay, when giving a notice of termination of an employment contract in the cases set out in Section 100, Paragraph five and Section 101, Paragraph one, Clause 6, 7, 8, 9 or 10 of this Law, an employer has a duty to pay a severance pay to an employee in the following amounts:*

- 1) *one month average earnings if the employee has been employed by the relevant employer for less than five years;*
- 2) *two months average earnings if the employee has been employed by the relevant employer for five to 10 years;*
- 3) *three months average earnings if the employee has been employed by the relevant employer for 10 to 20 years; and*
- 4) *four months average earnings if the employee has been employed by the relevant employer for more than 20 years.'*

relations. This is stipulated by Article, 128 Section 1 of the Labour Law⁴⁵. The employer's failure to make these payments does not influence the validity of the termination of employment relations but the employer may be ordered by a court ruling.

Unemployment benefits – waiting period of two months

In case employment relations are terminated on the grounds of the employee's resignation, the employee is entitled to the unemployment benefit when he/she has filed the necessary documents with State Social Insurance Agency, but not sooner than two months after the day when the status of the unemployed has been obtained. The two months waiting period is regulated by Article 13 Section (1), Subsection 2) of Unemployment Insurance Law. Due to this reason employees may on some occasions prefer the mutual agreement possibility instead of unilateral resignation cause.

The amount of the unemployment benefit is determined by taking into account the length of the social insurance period and the average of the person's insurance contribution salary (please see Section 4.3 of the Report above).

Retirement pensions

The fact of the employee's resignation as a basis for termination of employment relations has no effect on the statutory retirement pension scheme. There is no information available to the authors suggesting that the previous statement would differ in relation to private retirement pension schemes.

Company retirement pension schemes are not generally practicable in Latvia, although there might be a few special cases where the grounds of terminating employment relations might be of relevance. Nevertheless, such information is not publicly available and the authors are not aware of any court practice on such matters.

Sickness insurance

As explained in Section 4.3 of the Report above, sickness insurance cover by the state social insurance scheme relates to an insured employee or a self-employed person.

⁴⁵ Labour Law Section 128 (Payment of Sums Due to an Employee) Paragraph 1 provides: *'When dismissing an employee, all sums due to the employee from the employer shall be paid on the day of dismissal. If an employee has not performed work on the day of dismissal, all sums due to him or her shall be paid not later than on the next day after the employee has requested a statement of account.'*

Therefore, in case a person becomes unemployed after resignation from employment, the person is not entitled to the regular public sickness insurance cover.

If the employer has entered into private health insurance schemes for its employees, such health insurance cover usually follows the validity period of the employment agreement.

The form of resignation as grounds for termination of employment relations therefore has no special impact on the matters related to sickness insurance, apart from the general consequences which are caused by the fact of termination of the employment relations as such.

7.5. Remedies

The general remedies available to parties of a civil contract

Apart from the general ones, there are no special remedies available in cases of termination of employment relations on the basis of the employee's resignation.

Compensation of direct damages (losses) – claim within two years time

The employer may claim compensation of direct losses, if such are caused to the employer as a result of illegal, culpable action on behalf of the employee. The Labour Law Article 79 Section 2 provides that the employer may demand such compensation in court within two years from the time when the losses were caused⁴⁶.

The employer's possible course of action in case of the employee's resignation due to an important reason (Article 100 Section 5 of the Labour Law)

In the event the employer does not agree with the immediate notice by the employee which is based on an important reason, employer:

- could not pay the dismissal allowance to the employee, whereupon the employee may bring a claim to the court;
- may bring a claim to the court on collection of the employer's direct damages from the employee within two years from the time when the losses were caused by the employee.

⁴⁶ Labour Law Section 79 (Deductions to Compensate for Losses Caused to an Employer) Paragraph 2 provides: 'If an employee contests the basis or the amount of a claim for compensation of losses caused to the employer, the employer may bring a relevant action in court within a two-year period from the day the losses were caused.'

The issue of the existence of the important reason will be decided by the court according to considerations of justice and general principles of law.

7.6. Compensation to the employer

In case of unilateral resignation by the employee, no compensation is payable to the employer in Latvia. If the employer suffers direct damage arising from breach of contract by the employee, the employer is entitled to claim compensation of damages as outlined in Section 7.5 of this Report above.

7.7. ‘Contrived’ resignations

Latvian Labour Law does not directly regulate the consequences of such resignations which actually conceal a dismissal. Practice suggests that employers would sometimes consent to resignation by an employee even if clear grounds for dismissal are established. By acting so the employees mitigate the risk of possible subsequent court proceedings where the employer would bear the burden to prove that the dismissal procedure was conducted in a completely lawful manner. It is also noted that the employer is not required to pay severance in case of standard resignation by the employee, whilst in the dismissal case severance is payable in certain regulated instances.

In case of forced resignation the employee’s remedy might be a court action by claiming the resignation notice null and void due to fraud or deceit exercised by the employer. The employee would bear the burden to prove the employer’s fraud or deceit in such a case.

7.8. Resignation for proper cause

Resignation due to an important reason

An employee, provided he/she has an important reason, may issue a resignation notice without complying with the notice period stipulated by Article 100 of the Labour Law (i.e. must usually – one month). Such reason, in accordance with Article 100 Section 5 of the Labour Law, is deemed to be any condition that does not allow continuation of employment relations on the grounds of considerations of moral and decency (for

example, the employer has humiliated the employee). Resolution of such matter may be also taken to the court.

When resigning due to an important reason, the employee should refer to Article 100 Section 5 of the Labour Law in his/her written resignation notice. Although not expressly stated in the Labour Law, it follows from the general principle of acting in good faith that the employee shall outline in the termination notice the important reason for immediate resignation or communicate the reason to the employer by other means. Otherwise the employer might have no source to consider the reason behind the resignation. In case court proceedings are instigated, the employee will have the duty to indicate the important reason behind the termination and to refer to the relevant facts and supporting evidence.

Immediate resignation due to an important reason requires the employer to pay severance to the employee. For severance pay amounts please see Section 6.3.3 of the Report above.

7.9. Collective agreements

Collective agreement may provide for shortened notice period

According to Labour Law collective agreements may regulate a shortened time period applicable in case of resignation by an employee.

8. GENERAL QUESTIONS RELATING TO ALL FORMS OF TERMINATION OF EMPLOYMENT RELATIONS

8.1. Non-competition agreements

Types of competition restrictions

There are two types of competition restrictions in relation to employees, namely:

- 1) competition restrictions during the validity period of the employment agreement, for instance, prohibition to perform ancillary work, by entering into employment agreements or service agreements with other employers;
- 2) competition restrictions after termination of the employment relations.

Considering the scope of the Study, the second type or non-competition agreement is addressed herein in a slightly greater detail.

The legal provision – Article 84 of the Labour Law

Article 84 of Labour Law⁴⁷ sets forth the rules to be observed in the event of non-competition agreement after termination of the employment relations.

Validity and enforceability preconditions

For the purposes of a competition restriction to be legally valid and enforceable, it shall satisfy the following preconditions:

- 1) the agreement concerning restriction of competition shall be made in writing (it may be either a separate agreement or a clause in the employment agreement);
- 2) the type, extent, place and time period of the competition restriction shall be stated in the agreement;
- 3) the compensation (in adequate amount) payable to the employee concerning the competition restriction shall be stated in the agreement and the employer must duly pay the compensation on monthly basis during the effective period of the competition restriction;
- 4) the competition restriction must be reasonable and related to the field of commercial activities of the employer and the area in which the employee was employed;
- 5) the competition restriction shall not be longer than two years.

⁴⁷ Labour Law Section 84 (Restrictions on Competition after Termination of Employment Legal Relationships) provides: *'(1) An agreement between an employee and an employer regarding the restriction of the occupational activities of the employee (restriction on competition) after termination of employment legal relationships is permitted only if the agreement referred to conforms to the following features:*

1) its purpose is to protect the employer against such occupational activity of the employee as may cause competition for the commercial activity of the employer;

2) the term for restriction on competition does not exceed two years from the date of termination of employment legal relationships; and

3) it provides for a duty of the employer to pay the employee adequate monthly compensation for the observance of restriction on competition with respect to the time period of restriction on competition.

(2) The term for restriction on competition may only apply to the field of activity in which the employee was engaged during the period of existence of employment legal relationships.

(3) An agreement regarding restriction on competition shall not apply insofar as it, in conformity with the type, extent, place and time of restriction on competition, as well as taking into account the compensation payable to the employee, is to be regarded as unfair restriction of further occupational activity of the employee.

(4) An agreement regarding restriction on competition shall be entered into in writing, indicating the type, extent, place and time of restriction on competition and the compensation payable to the employee.'

Amount of the compensation

The competition restriction agreement is invalid without compensation to the employee, however, the Labour Law does not specify the exact amount of such compensation. Nevertheless, the law sets forth two general guidance criteria, i.e. (1) the compensation must be just and adequate and (2) when determining the compensation it shall be considered that the aim thereto is to compensate the short term limitation for further career development of the employee in a specific area and the payments shall ensure subsistence resources for the employee over the limitation period. It follows that a symbolic compensation shall not survive the test of appropriateness. The developing Latvian practice in this field suggests that compensations in the amount of 20% up to 50% from average earnings of the employee are identified as compensation for the competition restriction. The authors, however, are not aware of a Latvian court judgment testing the appropriateness of a specific compensation amount.

On certain occasions the employer is relieved from the duty to pay compensation whilst the competition restriction remains effective. This applies if the employment relations with the employee were terminated by the employer due to:

- substantial breach of the employment agreement or employment regulations,
- illegal actions performed by the employee during performance of work,
- the employee acting against good morals when performing the work,
- the employee being in condition of alcohol, drug, or other such type of intoxication when at work;
- substantial breach of work protection rules by the employee that endangered security and health of other persons.

Unilateral withdrawal from a competition restriction agreement

The Labour Law provides that the employer may withdraw in writing from an agreement regarding restriction on competition prior to the termination of legal employment relationships. Such withdrawal notice must be expressed in writing. The Republic of Latvia Supreme Court Senate has clarified that the employer may use these rights not only until the day of issuing the termination notice, but also until the time when the employment relations actually terminate (i.e. even during the termination notice period). At the same time the authors of the Report should note that practitioners also express a different opinion – that the employer is entitled to unilaterally withdraw from the competition restriction agreement only until the day on which termination notice is issued.

It should also be noted that in case the employee issues a resignation notice due to an important reason (any condition that does not allow continuation of employment relations on the grounds of considerations of moral and decency) the employee enjoys the right to unilateral withdraw from the agreement regarding restriction on competition. The employee may exercise such rights by issuing a written notice within one month from the day of termination of the employment agreement.

8.2. Agreements to the effect that the employee will not terminate the contract during a certain period

In Latvia a non-termination clause in an employment agreement would be void and unenforceable. The employee's statutory rights to termination of the agreement at any time may not be restricted by the employment agreement.

8.3. The issuing of a reference

Reference/statement concerning the work performed

Article 129 of Labour Law⁴⁸ provides that at the request of an employee the employer is obliged to provide a written statement / reference concerning (1) the length of employment relations of the employer and the employee, (2) work performed by the employee, (3) taxes deducted and (4) mandatory state social security payments made. The statement / reference must be based on records and documents available to the employer. It should be noted that state or municipal institutions may request from the employer the said statement / reference concerning a particular employee if such document is necessary for the public body for the performance of its legal functions.

The said reference must be issued within a reasonable time period after receipt of the corresponding request from the employee. The law does not specify that the reference must be issued as a rule when the employment relations with the employee are terminated (i.e. it is not required to issue the reference if the employee is not requesting it).

⁴⁸ Labour Law Section 129 (Statement of Work) provides: '(1) At the request of employee or at the request of State or local government institution for the performance of its legal functions, employer has a duty to provide a written statement of the length of employment legal relationships of the employer and the employee, work performed by the employee, taxes deducted and State social security mandatory payments made. (2) The statement shall provide the information requested which the employer can substantiate with documents in administrative records or in archives.'

Statement concerning the remuneration and social insurance payments made

Article 64 of Labour Law⁴⁹ stipulates that upon request from an employee the employer is obliged to issue a written statement concerning the employee's remuneration and mandatory state social insurance payments paid / deducted from the gross salary by the employer. The statement must be issued within five business days from the receipt of the employee's request. Practice suggests that such statements are usually requested by employees when they opt for challenging the termination notice at court. The statement then serves as evidence for calculating the requested compensation for the period of forced absence from work.

Other references

Latvian Labour Law does not regulate issuing of detailed references regarding the personal qualities and professional capabilities of the employee. Such references may certainly be issued pursuant to an agreement between the employer and employee. It is also a common practice that recruitment agencies / head-hunters / employers approach the former employers of a prospective employee for informal (usually oral) reference regarding the particular individual. Nevertheless, the process of requesting or rendering such references is not regulated by provisions of law. The principle of acting in good faith applies here and rendering of deliberately inaccurate or unfair reference might trigger action regarding communication of defamatory and intentionally falsified information and possible damages claim related thereto. The authors of the Study are not, however, aware of any such formal action having been brought to the court in Latvia concerning rendering of deliberately inaccurate or unfair reference.

8.4. Full and final settlement

When addressing the settlements matter, a distinction must be made between out of court settlement and court settlement.

Out of court contractual settlement

⁴⁹ Labour Law Section 64 (Statement of Work Remuneration and Mandatory State Social Insurance Payments) provides: 'Employer, upon request from employee, shall within five working days issue to employee a statement of his or her work remuneration and mandatory State social insurance payments paid.'

It is common practice in Latvia to identify in a mutual agreement concerning termination of employment relations that the parties have no claims in relation to each other arising out of the terminated employment relations. This contractual provision considerably mitigates the probability of any litigation being initiated. However, this possibility cannot be ruled out completely.

Full and final settlement at court to terminate employment dispute

A court-approved settlement satisfies the nature of ‘full and final’ settlement. If in a labour matter the court has approved a settlement between the parties and has closed the case on that basis, it is not possible to initiate court proceedings on the same basis anew. As noted in Section 4.8 of the Report above, a settlement during litigation becomes fully valid (effective) only with court approval. The court may rule to approve the settlement *in absentia* of the parties if the text of the settlement is approved by a notary public and the parties have conformed that they are aware of the procedural consequences of the settlement (i.e. that after the settlement is approved by the court a dispute on the same grounds may not be renewed at a court).

Appendix: Legislation on ‘probationary periods’ in Latvia

The legal provision – Chapter 13 of the Labour Law

Legal norms concerning probationary periods are included in Chapter 13 of the Labour Law which consists of three articles (Articles from 46 to 48).

Aim of the probationary period

The main aim of the probationary period is to clarify whether the relevant employee is suitable for performance of the work entrusted to him or her. The probationary period is important also for the employee to be able to verify if the particular job and working conditions are suitable for him/her. During the probationary period the new employee enjoys the same rights and has to observe the same obligations as other employees. The only difference is the simplified termination option during the probationary period.

Probationary period must be agreed in the employment agreement

The matter whether employment relations are established with or without a probationary period is regulated by the employment agreement. In order to be applicable, the probationary period provision must be included in the employment agreement. In the absence of such regulation the employment relations are established without the probationary period. It should be noted that the probationary period may not be determined for persons under 18 years of age.

Maximum three-month period

According to Labour Law, the duration of the probationary period may not exceed three months. It follows that the employment agreement should clearly stipulate the duration of the probationary period within the limits of statutory established maximum. The said term does not include periods of temporary inability to work (e.g. sickness) and other such periods when the employee does not perform work due to a justified cause.

Termination of employment relations during the probationary period

During the probation period the employer and employee both have equal rights to unilaterally terminate the employment agreement by giving a written termination notice at least three days in advance.

Indicating the cause for termination

When issuing a termination notice during the probationary period the employer is not obliged to indicate the cause for such notice. This certainly applies also to the employee.

Continuation of employment relations

If at the expiry of the contractually agreed term of the probationary period the employee continues to perform the work, it is considered that he or she has passed the probationary period and the employment relations continue. It is not required that the employer communicates to the employee the matter of successful completion of the probationary period in any regulated form. Factual continuation of employment after lapse of the probationary period serves as sufficient proof that the employee has successfully passed the probation.

Employee's remedies

Compensation in case of differential treatment. In case the employer has violated prohibition of differential (discriminatory) treatment when issuing a termination notice during the probationary period the employee is entitled to claim appropriate compensation from the employer. Such action must be brought at court within one-month period from the receipt of the termination notice from the employer.

Possibility to claim reinstatement at work – a matter of ongoing discussions. It is argued by several practitioners of law in Latvia that the employee does not enjoy rights to challenge the employer's termination notice which is issued during the probationary period and to claim reinstatement at work. The supporters of this opinion emphasize that employers are not obliged to substantiate the termination notice during the probationary period and hence the challenging option of such termination notice is not justifiable.

On the other hand, a former Constitutional Court justice and current Supreme Court Judge Ms. Ilze Skultane in her publications supports an opinion that the Labour Law prohibits the employer to terminate the employment agreement during the probationary period. The Judge notes that in line with the aim of the probationary period the termination of the employment agreement must be substantiated with circumstances evidencing the employee's inadequacy for the particular job. The termination notice during the probationary period is unchallengeable if it is related to unsatisfactory results of the probation process (e.g. the employee's personal skills, knowledge, qualities do not fit the requirements for performance of the particular job). In such case the law respects the employer's interests in searching for an appropriate employee. Consequently, if the employer uses the probationary period in a fair manner to verify the employee's conformity to the job position, unilateral termination rights are compatible with such approach. To illustrate inadmissible behaviour of the employer during the probationary period Ms. Skultane refers to situations when the employer takes advantage from employing persons during the three-month probation for a low salary and promises considerable salary raise thereafter. Nevertheless, the employees (for instance, assistants at shopping malls) are released from work close to the expiry of the probationary period without stating of any reason. Afterwards the same employer exploits this approach with new employees for the same position. It is clear that such acting contradicts the civil law principle of exercising rights in good faith and the principles incorporated in constitutional law instruments and employment law. In case of unfair treatment the employee must enjoy a court protection. The Labour Law does not expressly limit the employee's entitlement to a fair trial in case of termination during the probationary period. It therefore follows that the employee should be able to claim reinstatement at work also in case the termination during the probationary period occurred on an unfair basis.

The authors of the Report are not aware of any court precedent dealing with the situation described above . The Judge Ms. Skultane also points out that it is up to the court practice to render justified explanation / solution to the above outlined difference of opinions. The authors of the Report share the opinion that the employee is entitled to court protection in the event of unfair termination during the probationary period.