

# TERMINATION OF EMPLOYMENT RELATIONSHIP IN LITHUANIA

## STUDY REPORT

by

**Prof. dr. Ipolitas Nekrošius, Vilnius University Faculty of Law**

**Assoc. Prof. dr. Tomas Davulis, Vilnius University Faculty of Law**

## INTRODUCTION

The purpose of this study report is to describe the legal situation in Lithuania in the field of regulating of termination of employment relationship. The analysis covers the sources of law and scope of the rules governing the termination of employment relationship, the grounds on which the employment relationship may be lawfully terminated and their substantial conditions. In addition, it examines the procedural requirements and the effects of dismissal, the enforcement of the rules on termination of employment relationship, the remedies and access to remedies of dismissed employees as well as other questions related to restoration of infringed rights of dismissed employee.

### 1. SOURCES OF LAW

#### 1) Constitutional status of the rules on the right to work

The Constitution of the Republic of Lithuania of 25 October 1992<sup>1</sup> contains Chapter IV entitled „National Economy and Labour”, where the freedom of individual economic activity and the right to private ownership on which the economy is based is consolidated. In the norms of the Chapter, the fundamentals of the protection of labour rights are entrenched. The Constitution prescribes freedom of occupation and business, the right to just, safe and healthy working conditions, adequate compensation for work, social security in the event of unemployment, the right to rest and leisure, as well as to annual paid holidays. Other norms of the Constitution provide for ways of protection of economic and social rights, including those related to the freedom to organize and the right to strike.

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<sup>1</sup> Valstybės žinios [State Gazette], 1992, no 33–1014.

Article 48 (1) of the Constitution prescribes that every person may freely choose an occupation or business, and shall have the right to adequate, safe and healthy working conditions, adequate compensation for work, and social security in the event of unemployment. The Article has not been yet a subject of interpretation of the Constitutional Court in the context of termination of employment relationship. However, sentiments by the Court in respect to this constitutional provision may help understand the general attitude towards regulating the termination of the employment relationship. The Constitutional Court of the Republic of Lithuania has continuously held that “human labour rights” as established in the Constitution make an integral part of the constitutional status of a person. A human being is understood not as an abstract social, economic or professional category or a participant of the relations of production but as a free personality whose human dignity ought to be protected. The duty of the state is to ensure co-operation between the parties of labour relations on the grounds of social partnership and to protect the rights of the employee since he is, as a rule, from the economic and social standpoint, the weaker party. The Constitutional Court emphasizes that legal norms regulating the relationship of employment and areas linked with them must not only provide for the protection of the employee in the process of work but also to ensure a whole spectrum of guarantees of rights of a working individual in attempt to avoid groundless domination of one party of labour relations and dependency of the other party.

By enumerating the principles which shall be observed while regulating the relationship of employment, the Constitutional Court in its ruling in 1998 was inexplicitly referring to the principles of labour law as they were consolidated in Article 2 of the Law on Employment Contracts of 28 November 1991<sup>2</sup>. This article established, among other six principles, the right of an employee to resign subject to the procedural requirements as well as the right of the employer to terminate the contract of employment only on the grounds established by laws. However, it remains unclear whether the said fundamental provisions have preserved their constitutional value because the Law on Employment Contracts was repealed by the new Labour Code on 1 January 2003. Instead of explaining the rights and obligations of the parties in relation to the termination of the contract of employment, the new Labour Code establishes the principle of the “stability of employment relationship”. What is exactly meant by stability remains unclear, but the

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<sup>2</sup> State Gazette, 1991, no 36-973.

literature tends to interpret the principle “stability” as a requirement to establish mandatory rules governing the termination of employment<sup>3</sup>.

In addition, the Constitutional Court asserts that both—sufficient protection of the property interests of the employer and protection of the employee’s labour rights are necessary pre-conditions for normal economic activity in a modern society. Thus the legislator must harmonise different interests and ensure a balance of constitutional values. The Constitutional Court stresses that in attempt to ensure the balance between the employer and the employee certain guarantees shall be established for the employees which may not be diminished by the parties in their agreement. These guarantees include a minimum remuneration for work, compensation for idle time in cases provided for by the law, *retirement benefits, a strict regulation of termination of the labour contract on the initiative of the employer* etc. The implementation of these measures provided for by the law is linked with certain expenses of the employer. These measures are, however, necessary in order to protect social needs of the employee, underlines the Constitutional Court.

## **2) International agreements and conventions**

The Republic of Lithuania has ratified the following international agreements and conventions dealing with the termination of the employment relationship:

- ILO convention 135 concerning protection and facilities to be afforded to workers’ representatives—on 23 June 1994;
- ILO convention 173 on protection of workers’ claims—on 23 June 1994.
- A revised European Social Charter (1996)—on 15 May 2001.

## **3) Sources of the law and their hierarchy**

The Labour Code of 4 June 2002<sup>4</sup> (in force since 1 January 2003) is the primary source of the law regulating individual relations between the employer and the employee including the termination of the employment relationship. The Labour Code contains chapter XII “Employment Contract”, and section 4 of the Chapter is devoted exclusively to the termination of the employment relationship (Articles 124-141). Besides, Article 297 the Labour Code establishes the main rules related to the resolution of labour disputes related to *inter alia* termination of an individual contract of employment. The Labour Code

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<sup>3</sup> *Lietuvos Respublikos darbo kodekso komentaras* (Commentary on the Labour Code of Republic of Lithuania), Vol. 1: Part I. General Provisions. Part II. Collective labour relations // Vilnius: Justitia, 2003. P. 33-34.

<sup>4</sup> State Gazette, 2002, no 64-2569.

is statutory considered to be *primus inter pares* in the Lithuanian system of Labour Law: in case of a contradiction between a provision of the Labour Code and provisions of another law or a regulatory act, the provision of the Code shall apply (Article 11 (1) Labour Code).

Other laws (*įstatymai*) as normative acts of the Parliament may regulate specific aspects of the termination of the employment relationship as well as target specific groups of employees (employees' representatives, heads of companies, teaching staff and employees of the companies where the procedure of bankruptcy has been initiated etc.) The primacy of the Labour Code means in practice that the applicability of these specific rules depends on their conformity with the principles and main provisions of the Labour Code. The Civil Code may be only applied by way of analogy where the Labour Code or other labour laws have no direct provision regulating a certain relationship.

Resolutions (*nutarimai*) of the Government of the Republic of Lithuania are rare (e.g. governing peculiarities of various types of employment contracts) and make up a limited source of the labour law in Lithuania since they may regulate labour relations only in cases and to the extent determined by the Labour Code and other laws. These regulations may not provide for employees conditions, which would be less favourable than those established by the Labour Code and other laws. This same shall be applied to Decrees (*įsakymai*) of the Minister of Social Security and Labour which make up a rather exceptional way to regulate the termination of the employment relationship (e.g. in case of procedure of collective redundancies).

Collective agreements (*kolektyvinės sutartys*) at national, sectoral, territorial or, clearly predominantly, enterprise level are recognised as legal acts having a normative effect. Since the law regulates the subject in a highly detailed and imperative way, collective agreements play a marginal role. The only exceptions are fragmental provisions on notice periods, severance pays or a minor extension of statutory guarantees. In any case, collective agreements relating to working conditions, under which the position of employees is made less favourable than that established by this Code, laws and other regulatory acts, shall be invalid. In addition, they shall be guided by the principles of justice, reasonableness and good faith.

Another instrument among the sources of Lithuanian labour law pertains to local (internal) regulatory acts, such as internal regulations at the workplace defining the procedure of work at the enterprise and enumerating duties of employees in greater detail. Internal regulations shall be approved by the employer subject to the approval by the employees' representatives (if any), and they may not provide for employees conditions,

which would be less favourable than those established by Labour Code, other laws and normative acts.

Individual contracts of employment may stipulate diverse aspects of the termination of contract (especially a severance pay, notice periods, compensation of the expenses incurred by the employer in relation to the employee's training, study visits etc.) but there is an explicit prohibition against providing working conditions, which are less favourable to the employee than those provided by the Labour Code, other laws and other regulatory acts and the collective agreement. In case of contradiction, provisions laid down in the Labour Code, laws, regulatory acts or the collective agreement shall apply.

#### **4) Role of the judge-made law and custom**

The role of a court is limited to the interpretation and application of laws and other legal acts. Thus courts are engaged in examining substantial and procedural aspects of the termination of the relationship of employment, especially in questions of:

- Assessment of the existence of the grounds for dismissal (e.g. existence of "significant" reasons of economic nature for redundancy, facts of gross breaches of the work duties for dismissal on disciplinary grounds etc.);
- Verification of the concordance of the procedure of termination with statutory requirements.

The Lithuanian Supreme Court has a statutory right to shape unanimous practice of courts. Courts of lower instances are obliged "to take into account" the published significant rulings of the Lithuanian Supreme Court as well as resolutions adopted by the Senate of the Court in a particular sphere of law. During the last two years the Senate of the Lithuanian Supreme Court has adopted two resolutions aiming at establishing the united practice of courts with regard to dismissals for economic reasons and dismissals on disciplinary grounds:

- Resolution No 44 of 29 December 2003 on the application in the courts' practice of legal provisions of the Labour Code which govern the termination of the contract of employment without any fault on the part of the employee (Article 129)<sup>5</sup>.
- Resolution No 45 of 18 June 2004 on the application in the courts' practice of legal provisions of the Labour Code which govern the termination of the

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<sup>5</sup> Teismų praktika (Court Practice, 2004, no 20)

contract of employment pursuant to Article 136 (3) p. 1 and p. 2 of the Labour Code<sup>6</sup>;

These resolutions were accompanied by critical surveys made by the Lithuanian Supreme Court on the practice of lower courts.

The custom plays no role at all in Lithuania.

## **2. SCOPE OF RULES GOVERNING THE TERMINATION OF THE INDIVIDUAL CONTRACT OF EMPLOYMENT**

### **1) Ways of terminating an employment relationship**

According to provisions of the Lithuanian Labour Code, the relationship of employment may be terminated in the following ways:

- Without the will of the parties on the grounds provided by the law;
- By a single will of both parties (termination by mutual agreement);
- By the employer's unilateral will:
  - Without any fault on the part of the employee (dismissal for economic and similar reasons);
  - With the fault on the part of the employee:
    - A gross breach of work duties (a qualified breach of labour discipline);
    - A repeated negligence in the performance of the work duties or for the violation of the work discipline if the disciplinary sanction was already imposed on employee during the last 12 months (a repeated breach of labour discipline);
  - An initiative to terminate a fixed-term contract at the end of the term of the contract;
  - An initiative to terminate the contract during the probation period if the probation was set to assess the suitability of employees for work;
- By the employee's unilateral will:

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<sup>6</sup> Court Practice, 2004, no 21.

- Resignation on “serious” grounds;
  - Resignation on the grounds which are not considered “serious”;
  - An initiative to terminate a fixed-term contract at the end of the term of the contract;
  - An initiative to terminate the contract during the probation period if the probation was set to assess the suitability of work for the employee;
- Dissolution of the contract by court (in case of declaration by the court of unlawful dismissal but not reinstatement)

## 2) Exceptions or specific requirement for certain employers or sectors

The rules on the termination of the relationship of employment do not apply to:

- Highest state officials, including judges, and politicians;
- Members of the armed forces.

Civil servants (*valstybės tarnautojai*) (i.e. natural persons working in a state or local municipal institution or agency, performing the functions of public administration as established by the Public Service Act of 8 July 1999<sup>7</sup>) and ‘statutory’ civil servants (i.e. civil servants, which are covered by special ‘statutes’, like prosecutors, policemen, internal affairs, intelligence services and the like) are not considered as employees (*darbuotojas*). Theoretically they may be covered by the labour legislation in aspects which are not regulated by the legal norms of the Public Service Act and ‘statutes’. However, the termination of their service relationship is regulated by respective laws in a highly detailed and imperative way and there is no room left for the application of ordinary rules.

Ordinary rules apply to full extent to persons working for government or public authorities under contracts of employment, employees of public-sector corporations, domestic servants, farm labourers, persons working on board ships (except for the rules on collective dismissals), port workers, members of religious communities. A special feature concerns the work of teachers at higher education institutions and universities—they shall only be employed under a fixed-term contract. The employment contract with non-EU citizens in general shall be a fixed-term contract (1 or 2 years), subject to temporal work permission.

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<sup>7</sup> State Gazette, 1999, no 66–2130.

However, professional sportsmen work under a special contract of the civil law nature therefore the labour legislation does not apply to them.

### **3) Exceptions or specific requirements for certain types of contract**

Under a fixed-term (fixed-term or fixed-task) contract, the employee may unilaterally terminate the contract prior to the expiry of the term with a notice even without any grounds, but the termination on the initiative of the employer is aggravated: an employer shall be entitled to terminate a contract only in extraordinary cases where the employee cannot, with his consent, be transferred to another work, or upon the payment of the average wage to the employee for the remaining period of the employment contract. There are additional grounds for termination of short fixed-term contracts with the length of up to two months and seasonal contracts.

Ordinary rules are applicable to full extent with regard to contracts of employment for employees working part-time and for home-workers.

Currently, contracts of employment for temporary work (work under contract with the agency of temporal employment), contracts of employment for intermittent work, contracts of employment for work on-call, solidarity contracts and contracts of integration of disabled people do not exist in Lithuanian labour law.

Job training contracts as well as apprentices' contracts are not considered as contracts of employment.

### **4) Exceptions or specific requirements for certain categories of employer**

There are no exceptions or specific requirements for certain categories of employers, except those related to collective redundancies.

### **5) Exceptions or specific requirements for certain categories of employees**

There is no distinction between white-collar workers and blue-collar workers.

Members of supervisory bodies of companies are not employees unless they are employed in another position at the company. Members of administrative/management boards of the company may usually work without a contract of employment. However, often they are managers or heads of administrative departments or structural units of the enterprises therefore they are employed as employees as well. There are only some special rules with regard to heads of companies developed exclusively by the court practice.



According to the Law on Companies<sup>8</sup>, heads of companies shall work under employment contracts. However, by referring to the specific nature of his relationship that corresponds to a significant degree to the nature of the civil contract of assignment, the Lithuanian Supreme Court has developed a concept that heads of companies enjoy a limited degree of protection against dismissal. The Court argues mainly that the provision on the statutory right of a general meeting of shareholders to decide to revoke the head before the end of the term of his office shall be recognised as an absolute ground for the termination of contract with the head of the company. In that case, procedural requirements of the Labour Code (notification, priority, possibility to transfer to another position, guarantees for certain groups of employees etc.), will not apply.

In Lithuanian labour law neither age nor the entitlement to a statutory state pension is considered as a ground for the termination of the employment relationship. The age of the employee plays a role when determining the application of several statutory guarantees and supplementary rights.

With employees under 18 years of age:

- The contract of employment on the initiative of the employer without any fault on the part of the employee may be terminated in extraordinary cases only;
- A notice of dismissal must be given at least four months in advance.

Identical guarantees are provided for employees, who will be entitled to the full old-age pension in not more than five years (the statutory pension age for men is 62.5 years and for women—60 years). In addition, employees who are entitled to the full old-age pension or are in receipt thereof may terminate an open-ended employment contract by giving his employer a three day notice and will receive a severance pay of two average wages.

During the period of probation (which in general shall not exceed 3 months) shorter periods of 3 days notice apply. The initiative of the employee to terminate the contract has an absolute nature, whereas the employer shall prove that he has had enough evidence to establish that the employee concerned is not suitable for the job.

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<sup>8</sup> State Gazette, 2003, no. 123-5574.

### **3. DIFFERENT FORMS OF TERMINATION OF THE EMPLOYMENT CONTRACT**

#### **3.1. MUTUAL AGREEMENT**

##### **1) Substantive conditions**

Lithuanian labour law allows for parties of an employment contract to terminate the contract by mutual agreement. The termination may be initiated by either an employee or an employer. There are no substantive conditions to be satisfied by the employer or the employee, who wish to terminate the contract of employment by mutual agreement. There are also no conditions which are explicitly prohibited or considered void by law. General rules concerning the observation of the principles of reasonableness, justice and honesty (Article 35 (1) Labour Code) may formally apply, but it is hardly so presumably that they would interfere as far as termination by mutual agreement is concerned.

##### **2) Formal and procedural requirements**

Article 125 of the Labour Code requires that the proposal of a party to terminate the employment contract by mutual agreement shall be in writing. The written proposal shall be presented to the other party. If the latter accepts the proposal, it must, within seven days, give notice thereof to the party, which has put forward the proposal to terminate the employment contract by mutual agreement. Having agreed to terminate the contract, the parties shall conclude a written agreement on the termination of contract. This agreement shall indicate the date of the termination of contract as well as other conditions (severance payment, granting of unused annual leave etc.). If the other party fails to inform that it agrees to terminate the contract within seven days the proposal shall be considered rejected.

Neither in the proposal to terminate the agreement nor in the written agreement to terminate the contract the disclosure of the grounds for termination is required. There is no explicit legal requirement that the agreement shall be in duplicate, signed by the employer and by the employee; however, it seems likely that the judicial bodies would request to observe principles of civil law concerning the conclusion of contracts. Besides, courts are of an opinion that a separate letter of “acceptance” of a proposal is not needed—the reception of the proposal may be confirmed in writing on a

letter with a proposal to terminate the contract. Once the reception is confirmed, its cancellation is allowed exclusively with the consent of the other party.

The termination of the employment contract by mutual agreement is not regarded as a dismissal or redundancy and the statutory guarantees for employees are not applicable. There are no legal requirements to involve either the employees' representatives or public authorities in the procedure of termination of an employment relationship.

### **3) Effects of the agreement**

The employment relationship shall be terminated in consequence of the agreement on the date indicative in the agreement. In order to terminate the employment contract by mutual agreement, neither the employee nor the employer is obliged to take any other steps, except those related to formalization of the termination of employment relationship.

According to Article 141 of the Labour Code, the employer shall make a full settlement of accounts with an employee: he must pay the employee all the amounts due, fill in the employee's state social insurance card and employment contract in accordance with the established procedure, and, if the employee so desires, the employer must issue him a certificate about his work. A delay in settling accounts with the employee gives grounds to claim the payment before the court. If the court establishes that the delay was not on the part of employee, it should order the employer to pay the sum due and, in addition, to pay the employee an average pay for the time of delay.

However, the rule on the full settlement of accounts with an employee may be modified by mutual agreement. Since there are no explicit restrictions in the law, the written agreement on the termination of contract may stipulate:

- Additional payments made by the employer (severance payment, payment of bonuses etc.) as well as refusing to exercise the rights already acquired by the employee (pay, compensation for unused annual leave, various contractual and statutory compensation payments etc.).
- The day of the settlement of accounts may be not the last working day but any date indicated in the written agreement on the termination of contract.

Unless agreed otherwise in the written agreement on the termination of contract, there is no right to severance payment. The judicial bodies have not developed the practice that the severance payments or the agreed refusal to exercise the acquired rights are essential for determining the validity of the agreement on contract termination.

If the agreement provides for the severance payment or other payments the employee is entitled to refer to the court but the validity of the agreement is not affected.

The entitlements already acquired or being acquired under public retirement pension schemes and public sickness insurance schemes are not affected. In Lithuania, private pension schemes and private sickness insurance schemes hardly exist at all, but there is no legal obstacle to restrict the conferment of those entitlements in respective normative acts providing for such entitlements.

#### **4) Remedies**

There are no special statutory arrangements for contesting the validity of mutual agreement or the validity of contract termination by mutual agreement. There is a general rule that the employee may contest the termination of the employment contract and bring a case before the courts of general jurisdiction (civil courts) within a period of 1 (one) month after the termination of the relationship and receipt of the appropriate document (a general term for the court action in case of the termination of the employment relationship). This term may be extended if the action was delayed due to justifiable reasons. A claim of another nature arising from the contract is concerned with the written agreement on the termination of contract (e.g. related to unpaid severance payments etc.) and shall be brought to the court within 3 (three) years (general term for the claims arising from the labour relationship).

Since the claimant in labour cases is the weaker party and shall be treated more favourably, the Code of Civil Procedure of 28 February 2002<sup>9</sup> establishes special rules with regard to the resolution of individual labour cases. First of all, claimants (employees) are exempt from the stamp-duty. Alongside with the court of the employer's neighbourhood, the court on the territory where the work is performed, was performed or shall be performed is competent for any labour case. In addition, the Code of Civil Procedure contains chapter XX "*Peculiarities of Procedure in Labour Cases*", where special rules with regard to the resolution of individual labour disputes in the courts of general jurisdiction are laid down. Generally, in labour cases the court has very wide discretion to protect the employee's interests *ex officio*. In particular, the court may collect evidence on its own initiative, to involve the third party in the procedures, to exceed the demands of the claimants or to apply alternative means for the protection of the infringed rights. The Code of Civil Procedure sets short-time terms for the preparation and hearing

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<sup>9</sup> State Gazette, 2002, no 36–1340.

of the labour case in the courts of general jurisdiction. In 30 days, the case shall be prepared for hearings and a decision shall be taken not later than in 30 days after the beginning of the hearings. However, in practice courts rarely meet these deadlines. Despite the fact that the Code of Civil Procedure provides for the possibility to suspend the disputed action of the plaintiff with a court's order of interim relief, the option is not applicable in all cases of dismissal, because the action of reinstatement may be brought only after the employment contract is terminated. The Labour Code provides specific rules as regards a speedy execution of the court decisions in labour cases before the decision has taken an effect (in general, 30 days after announcing the decision or after announcing the decision of the court of appeal). In particular, the court *shall* issue an interim relief on the prompt reinstatement (on the next day) of the unlawfully dismissed employee into his previous job and/or on the award of a wage, the parts of it not exceeding the average monthly wage. The court *may*, on the claimant's application or on its own initiative, issue an interim relief to execute without delay of a decision or a part thereof on the formulation of dismissal or in other cases if the execution of the decision becomes not feasible or difficult due to special circumstances. The rules on interim relief are of mandatory nature in the Labour Code, but the Code of Civil Procedure gives differently to the judge full discretion to issue or not the interim relief prior to the decision of the court taking an effect. The courts, however, quite often take the option.

The failure by the employer to execute a decision of the court in labour cases or a failure to execute the decision to change the formulation of dismissal, on the demand of the employee the court shall make a ruling to recover for the employee's benefit the wage for the entire period until the day of its execution.

The former Code of Civil Procedure had an interesting rule on non-recourse in labour cases: if, under the cassation procedure, the decision of the court was repealed, the recourse of sums of money was permitted only in case the repealed decision was based on false evidence given by the plaintiff or forged documents presented by the latter. However, the new Code of Civil Procedure does not maintain such regulation.

There is no special rule governing the burden of proof; however, the judicial practice has developed a principle that the party of the dispute that exclusively possesses the evidentiary materials shall bear the burden of proof. Thus the burden of proof is on the employer to demonstrate the existence of grounds for terminating the employment relationship.

Trade unions shall not bring the action on behalf of the employees; however, they may represent their own members in the civil procedure. When a trade union represent its member in an individual case the written or even oral authorisation from the member is not needed, the trade union shall prove the membership of the employee and present the documents proving the representative status of a natural person acting as a representative: chairperson of the trade union body presents the documents concerning his/her election to the post, the legal adviser, jurist or employee of the trade union presents the authorisation from trade unions, and the lawyer presents the contract of representation before the court concluded with the trade union.

### **5) Unlawful agreements**

The termination of the employment contract by mutual agreement may be contested in court. The psychological or physical pressure of the employee to sign or accept the proposal would be treated as a ground for declaring the termination of contract unlawful. There is a presumption that the written offer expresses the true will of the party. Since the labour legislation does not provide any rules for the interpretation of agreements, the courts shall apply the rules of the Civil Code of the Republic of Lithuania<sup>10</sup> which govern the interpretation of civil contracts. Thus the termination of contract may be declared unlawful on the grounds of mental disturbance, error, deceit, abuse of circumstances as provided by the civil law rules on contracts.

In case of unlawfulness of the contract termination, the court shall reinstate the employee in his previous job and award him the average wage for the entire period of involuntary idle time from the day of dismissal until the day of the execution of the court decision. If the court finds that the employee may not be reinstated in his previous job due to economic, technological, organisational or similar reasons, or because he may be provided with conditions not favourable for work, the court will pass a decision to recognise the termination of the employment contract unlawful (in this case the employment contract shall be considered terminated from the effective date of the court decision) and order to award him:

- The average wage for the period of involuntary idle time from the day of dismissal from work until the effective date of the court decision; and
- A severance pay the amount of which is determined by the length of service of the employee concerned (under 12 months—one monthly

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<sup>10</sup> State Gazette, 2000, no 74-2262.

average wage, from 12 to 36 months—two monthly average wages, from 36 to 60 months—three monthly average wages, from 60 to 120 months—four monthly average wages, from 120 to 240 months—five monthly average wages, over 240 months—six monthly average monthly wages). The severance payment shall be paid by the employer in the same manner as any other sum established by the effective decision of the court in any other civil procedures.

Theoretically, the compensation of non-material damages of the employee is also possible.

Non-payment of severance payments, compensation or another sum by the employer, a failure of the employer to grant rights already acquired or currently being acquired to the employee will not be regarded as determining the unlawfulness of the agreement. The non-compliance with the written form of an agreement may, however, constitute a serious breach of the procedure and be the ground for reinstating the employee. So far there have been no such cases.

There are no particular administrative or criminal penalties which may be incurred under the circumstances. The employer's illegal actions (e.g. pressure on the employee to sign the written proposal or to accept the proposal) targeting the protected groups of employees such as pregnant women, young persons, disabled persons etc. theoretically may be the ground for his administrative or even criminal liability. The Equal Opportunities Ombudsman is authorised to investigate cases of discrimination based on sex, disability, sexual orientation, ethnic origin, age etc. and impose administrative sanctions on employers for the violations of the quality legislation.

The supervision of the enforcement of labour laws rests with the responsibility of the State Labour Inspectorate, which is entitled to impose sanctions, including fines from 500 LTL (approx. 145 EUR) to 5000 LTL (approx. 1450 EUR) for the violation of labour legislation (Article 41 (1) of the Administrative Penalties Act<sup>11</sup>). However, the State Labour Inspectorate would hardly apply the said provision in case of unlawful termination of the employment contract by mutual agreement of the parties.

## **6) Collective agreements and practice**

As a rule, collective agreements, which are normally concluded at the enterprise level, do not deal with issues of terminating the employment relationship by

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<sup>11</sup> State Gazette, 1985, no 1-1.

mutual agreement. This subject falls within the autonomy of the parties and is concerned with the individual employment contract; hence social partners have no ways to interfere. It should be born in mind that the chance of social partners to include the issue in the collective bargaining agenda is limited by the provision of Article 4 (4) of the Labour Code, according to which the norms of collective agreements which make the position of the employees less favourable than that established by the Labour Code, laws and other legal acts, shall be invalid.

### **7) Relation with other forms of terminating the contract of employment**

Mutual agreement is treated as an independent ground for terminating the employment contract and not a dismissal. It offers for the employer a lawful opportunity to propose for employee the termination in any case, including a dismissal on economic and even on disciplinary grounds. The termination of contract by mutual agreement means in practice that the employee voluntarily rejects the application of a number of statutory rights and may rely only on conditions laid down in the mutual agreement.

In practice, there is a clear link between the amounts of compensations usually payable to the employee on the termination of contract by mutual agreement and those statutory severance payments paid by the employer in case of terminating the contract on economic grounds (redundancy). If the employer proposes to terminate the contract by mutual agreement, it is expected that he will propose a compensation which will be no lower than the severance payment as it is regulated for dismissal on economic and technological grounds. Mutually agreed deviations from statutory severance payments are not significant (generally, from one to two monthly average wages).

There is no court practice as regards mutual agreement that is reached after the contract has already been terminated on another ground (e.g. dismissal). In general, the rules on the mutual agreement do not apply where the parties have reached a consensus during the legal proceedings concerning the dismissal. In the consensus, which is called a peace treaty, according to the rules of the Code of Civil Procedure, the parties theoretically may agree upon a change of ground for terminating the contract (e.g. a change of the previous ground of termination on contract upon a notice of an employee to the termination by mutual agreement) but in practice this option has never been used.

### **8) Special arrangements**

There are no special arrangements for certain categories of employees.



### **3.2. TERMINATION OTHERWISE THAN AT THE WISH OF THE PARTIES**

The Labour Code provides an exhaustive list of grounds for termination of an employment contract otherwise than at the will of the parties:

- Death of an employee;
- Death of an employer or the liquidation of an employer without a legal successor. The liquidation of an employer as a legal person is a legitimate ground also in cases where the legal person is terminated by a voluntary act on the part of the employer or by the employer's bankruptcy. However, the commencement of the bankruptcy procedures allows to start dismissal in accordance with the provisions of bankruptcy laws (see 3.3.4 p. 10);
- Dissolution of the contract by the court if during the legal proceedings concerning the dismissal the court establishes that the employee may not be reinstated in his previous job due to economic, technological, organisational or similar reasons, or because he may be provided with conditions not favourable for work;
- Dissolution of the contract by the court when a constituent part of an employment contract contradicts the imperative prohibiting provisions of laws, and those contradictions cannot be eliminated, also where there is no possibility to transfer an employee, with his consent, to another work, or when an employment contract with a foreign citizen is concluded violating laws or international agreements;
- When a court judgement whereby an employee is imposed a sentence, which prevents him from continuing his work, becomes effective;
- When an employee is deprived of special rights (e.g. truck driver—the driving licence, guard—the right to bear arms etc.) to perform certain work;
- Upon the demand of bodies or officials authorised by laws. Under current legislation there are no such bodies or officials left. The state bodies of supervision (e.g. State Control Office) may only “suggest” to competent bodies of public enterprises or public institutions that they should terminate the contract with an employee as a consequence of his negligence or a gross breach of his duties;

- When an employee is unable to fulfil these obligations or perform work in accordance with an opinion of the medical commission or the commission for the establishment of disability;
- When an employee from 14 to 16 years of age, or one of his parents, or the child's statutory representative, or his attending paediatrician, or the child's school demand that the employment contract be terminated.

The effluence of time, where the contract was concluded for a specific time period, and the completion of the task, where the contract was concluded for a specific task, are not automatically treated as a ground for the termination of the employment relationship under Lithuanian Labour Law. The expiry of the fixed-term contract is one of pre-conditions for the termination. Another necessary precondition is the factual will of one of the parties to finish the employment. The will of the party shall be expressed on the last day of a fixed-employment contract at latest, i.e. on the last day of work performance; however, no prior notice is required. If the term of an employment contract has expired, whereas the employment relations are actually continued and neither of the parties has, prior to the expiry of the term, requested to terminate the contract, the contract shall be considered to become open-ended.

Reaching the age when people are entitled to the full old age pension does not constitute the ground for the termination of the contract. The employee, however, is entitled to terminate the contract unilaterally upon his 3 days prior notice and receive the severance payment in the amount of his two monthly average wages.

## **2) Procedural requirements**

It should be stated at the outset that the regulation of the procedure of dismissal is quite limited. The law establishes only the duty of an employer to terminate the contract and that the prior notice for the termination is not needed. There are also no rules regarding the time limits for the employer to complete the procedure of termination of a contract.

There are no stipulations on the involvement of the employees' representatives or involvement of the public bodies in the procedure of termination of the employment contract.

Statutory guarantees for pregnant women and employees raising children, for employees' representatives, for employees during the period of sickness and temporary disability, as well as during their annual leave or fulfilment of active national defence service or other duties of citizen (see, for example, 3.3.4) are not applicable.

### **3) Effects of the existence of a ground**

If there is one of the above mentioned grounds established, the employment relationship must be terminated immediately.

The entitlement of employees to a severance payment depends on the fault on the part of the employee concerned. If the employment contract is terminated otherwise than at the will of the parties, but without any fault on the part of the employee concerned, he shall be paid a severance payment in the amount of his two monthly average wages, unless otherwise provided by laws or collective agreements. The fault on the part of the employee is presumed when the actions of the employee prevent the employment relationship from its continuation and therefore constitutes the ground for termination, e.g. the employee is imposed a sentence because of crime, the driving licence is deprived due to the breach of traffic regulations etc.

However, according to the latest amendments of the Labour Code, if an employment relationship is terminated upon the liquidation of an employer, a legal person, the severance payment shall depend on the length of service and be of same amount as that provided for employees in case of dismissals on the initiative of the employer (see 3.3.4). In case of insolvency the termination of contract is regarded as a dismissal and severance payments are provided by the law (see 3.3.4). In case of a fixed-term contract, there is no entitlement to a severance payment.

Dismissed employees are entitled to all unemployment benefits (all free of charge services of the State Labour Exchange including vocational guidance, vocational training, information on job vacancies, public works, works financed by the Employment Fund). The employee is entitled to the compensation which is paid after 8 days from the registration of the unemployed person in the regional Office of State Labour Exchange only if he is dismissed from work on the grounds of:

- Inability to fulfil these obligations or perform work in accordance with an opinion of the medical commission or the commission for the establishment of disability;
- Upon the liquidation of an employer, if his labour obligations were not placed on another person or in case of the death of an employer if the contract was concluded for the supply of services to him personally, as well as when the employer has no legal successor.

If a person was dismissed otherwise than at the will of the parties and received the severance payment, the waiting period for the unemployment compensation is

one month. If the ground for termination of the contract of employment was directly linked to the fault on the part of the employee, the waiting period for the unemployment compensation is three months. In any case the payment of the unemployment compensation depends on the period of obligatory insurance against unemployment (not less than 18 months during the period of the last 36 months) whilst the amount of compensation to some extent depends on the received salary.

The entitlements already acquired or being acquired under retirement pension schemes and sickness insurance schemes are not affected.

The non-payment by the employer of the sums due or the avoidance of the employer to make a full settlement of accounts with the employee does not affect the validity of termination of the employment relationship, but gives grounds to claim the payment before the court. If the court establishes that the delay was not on the part of employee, it should order the employer to pay the sum due and, in addition, to pay the employee an average pay for the time of delay.

#### **4) Remedies**

Like in cases of any other termination of the employment relationship, the action of reinstatement may be brought by the employee before the court of general jurisdiction (civil courts) within the period of one month after the termination of the relationship and receipt of the appropriate document (a general term for the court action in case of terminating the employment relationship). This term may be extended by the court if the action was delayed due justifiable reasons. A claim of another nature (e.g. related to severance payments etc.) shall be brought to the court within 3 years.

The claimants (employees) in labour cases are released from the stamp-duty. Alongside with the court of the employer's neighbourhood, the court on the territory where the work is performed, was performed or shall be performed is competent for any labour case. The court may collect evidence on its own initiative, to involve the third party into the procedures, to exceed the demands of the claimants or to apply alternative means for the protection of the infringed rights. The Code of Civil Procedure sets short-time terms for the preparation and hearing of the labour case – 30 days term for the preparation of the case for hearings and a decision shall be taken not later than 30 days in after the beginning of the hearings. Despite the fact that the Code of Civil Procedure provides for the possibility to suspend the disputed action of the plaintiff with a court's order of interim relief, this option is not applicable in all cases of dismissal, because the action is only possible only when the employment contract is terminated. According to the Labour Code,

the court *shall* issue an interim relief before the decision has taken an effect on the prompt reinstatement (on the next day) of the unlawfully dismissed employee into his previous job and/or on the award of a wage, the parts of it not exceeding the average monthly wage. The court *may*, on the claimant's application or on its own initiative, issue an interim relief to execute without delay of a decision or a part thereof on the formulation of dismissal or in other cases if the execution of the decision becomes not feasible or difficult due to special circumstances. The rules on interim relief are of mandatory nature in the Labour Code, but the Code of Civil Procedure gives differently to the judge full discretion to issue or not the interim relief prior to the decision of the court taking an effect. However, the courts quite often take the option.

The failure by the employer to execute a decision of the court in labour cases or a failure to execute the decision to change the formulation of dismissal, on the demand of the employee the court shall make a ruling to recover for the employee's benefit the wage for the entire period until the day of its execution.

The former Code of Civil Procedure had a rule on non-recourse in labour cases: if, under the cassation procedure, the decision of the court was repealed, the recourse of sums of money was permitted only in case the repealed decision was based on false evidence given by the plaintiff or forged documents presented by the latter. However, the new Code of Civil Procedure does not maintain such regulation.

Trade unions shall not bring action on behalf of the employees but they may represent members in the civil proceedings. When a trade union represent its member in an individual case the written or even oral authorisation from the member is not needed, the trade union shall prove the membership of the employee and present the documents proving the representative status of a natural person acting as a representative: chairperson of the trade union body presents the documents concerning his/her election to the post, the legal adviser, jurist or employee of the trade union presents the authorisation from trade unions, and the lawyer presents the contract of representation before the court concluded with the trade union.

There is no special rule governing the burden of proof. However, the judicial practice has developed a principle, that the party of the dispute that exclusively possesses evidentiary materials shall bear the burden of proof. Accordingly, the burden of proof is on the employer to demonstrate the existence of grounds for terminating the employment relationship. The burden of proof is always on the employer if the complainant establishes facts of possible gender-based discrimination.

The statutory grounds for the termination of the employment relationship without the will of the parties are stipulated by law in a strict manner. It leaves almost no room for the court's consideration whether the ground is a sufficient reason for the termination of the contract, except for those cases where exclusively the court shall decide on the dissolution of the contract. In general, the court shall accept valid and effective legal documents or established facts, which have constituted the ground for the termination of the contract. The respective legal documents or facts shall be contested in accordance with the procedure prescribed by law.

### **5) Ineffective purported termination**

If the court finds that the cause of the termination of contract is non-existent, it shall reinstate the employee in his previous job and award him the average wage for the entire period of involuntary idle time from the day of dismissal from work until the day of the execution of the court decision. If the court finds that the employee may not be reinstated in his previous job due to economic, technological, organisational or similar reasons, or because he may be provided with conditions not favourable for work, the court will pass a decision to recognise the termination of the employment contract unlawful (in this case, the employment contract shall be considered terminated from the effective date of the court decision) and award him:

- Average wage for the period of involuntary idle time from the day of dismissal from work until the effective date of the court decision; and
- Severance payment the amount of which is determined by the length of service of the employee concerned (under 12 months— one monthly average wage, from 12 to 36 months—two monthly average wages, from 36 to 60 months—three monthly average wages, from 60 to 120 months—four monthly average wages, from 120 to 240 months—five monthly average wages, over 240 months—six monthly average monthly wages). The severance shall be paid by the employer in the same manner as any other sum established by the effective decision of the court in any other civil procedures. If the dismissed employee has already received the severance payment according to the statutory requirements (see below), the average wage for the period of involuntary idle time shall be reduced by the sum equal to the received severance payment. The statutory conditions on granting the compensation and determining its amount are mandatory and the court must follow them. It differs from

the situation before 2003 when the court was entitled to decide freely on the amount of compensation for the employee—up to 12 monthly average wages.

Theoretically, the compensation of non-material damages of the employee is also possible for the illegal termination of the contract; however, so far the above compensation has not been awarded.

The non-payment to the employee of compensations, severance pays or other sums of any kind, or the employer's failure to respect the employees' acquired rights may not affect the validity of the termination of the employment contract.

Despite the fact, that the law gives the right to the court to reinstate the employee in case of the breach of the procedure of contract termination, the courts clearly differentiate between gross breaches of the procedure, which results in the reinstatement of the employee, and other procedural infringements, which do not invoke the illegitimacy of the termination. Since the termination on the grounds other than the will of the parties is imperatively regulated by law, procedural violations of any kind concerned with the termination may not influence its validity. The procedural irregularities concerned with a legal document or establishment of facts, which have constituted the ground for the termination of the contract, may deprive of the legality of the document or fact concerned. In this case the cause of the contract termination would be regarded as non-existent.

There are no particular administrative or criminal penalties which may be incurred under the circumstances, except for those constituting another ground for administrative or criminal liability (e.g. discriminatory action).

#### **6) Collective agreements and practice**

The termination on the grounds other than the will of the parties is imperatively regulated by law and there is almost no room for collective agreements to intervene. The exceptions are the possibilities in collective agreements to provide for severance pays for employees. By virtue of general principles of collective agreements, the latter may provide for more favourable provisions but the wording of the Article 140 (2) Labour Code ("unless otherwise provided by laws or collective agreements") makes an impression that the agreements of social partners may even provide for lesser than statutory severance pays (two months average wages) or even reject them. However, this option has not been tried by social partners so far.

In practice there are no collective agreements laying down the rules on the termination of an employment contract on the grounds other than the will of the parties.

### **7) Relationship with other forms of termination**

The termination of an employment contract on the grounds other than the will of the parties is regulated by law in a strictly imperative way. Individual or collective agreement may neither limit nor extend the scope of application of the rules on the termination of the employment contract on the grounds other than the will of the parties. The only possibility to change the statutory regulation is the agreements of individual or collective nature on financial aspects of termination (e.g. severance payments). In very few cases the switch to other grounds as, for example, to the termination of the contract of employment by mutual agreement or to the termination by resignation or even dismissal on the initiative of the employer without any fault on the part of the employee, presumably would be possible. The reverse way would be not allowed since this would make the situation of employees less favourable.

### **8) Special arrangements**

In this section the case of *fixed-term contracts* will be investigated. The Lithuanian labour law significantly restricts the conclusion of the fixed-term contract of employment. The conclusion of the fixed-term employment contract is allowed only if the work is of a non-permanent nature, except for the cases when this is provided by laws or collective agreements. Collective agreements are allowed to enumerate additional circumstances where the employer is allowed to conclude the fixed-term agreements for work of a non-permanent nature. The term of an employment contract may be determined until a specific calendar date or the occurrence, change or cessation of specific circumstances.

According to Article 126 of the Labour Code, upon the expiry of an employment contract an employer or employee both are entitled to terminate the employment contract. If the term of an employment contract has expired, whereas the employment relations are actually continued and neither of the parties has, prior to the expiry of the term, requested to terminate the contract, it shall be considered extended for an indefinite period of time. This provision of the law means that the expiry of the term of the contract itself is not a sufficient ground for the termination of the employment relationship. It can only serve as an essential pre-condition for the termination of the contract. Against that legal background the termination of the fixed-term contract of employment under the Lithuanian labour law system is understood as either a termination at the will of the employer or respectively, the termination at the will of the employee. In both cases the notice of the other party is not required and the severance payment is not



provided, except for the designation of the employee on „serious“ grounds (see 3.4 p. 4). The guarantees of particular groups of employees that are by virtue of law applicable in case of redundancy, are not applicable in case of fixed-term agreements, except for the prohibition to terminate the employment contract with a pregnant employee.

The situation in terminating the employment relationship during *the period of probation* is similar. The existence of the initiative of at least one of the parties to terminate the relationship is essential for the termination of contract during the probation. There are two types of probation in Lithuanian labour law that may be agreed by the parties in an individual contract of employment:

- Initiated by the employer and aiming at assessing the suitability of an employee for the work;
- Requested by the employee in order to assess the suitability of a job for him.

If the probation was set to assess the suitability of an employee for the work, the employer is entitled to terminate the contract of employment during the probation period by giving the employer a written request thereof three days in advance. The guarantees and the procedural requirements of the dismissal on economic grounds (see 3.3.4) are not applicable in this case. If the probation was requested by the employee in order to assess the suitability of a job for him, he is entitled to terminate the contract of employment by giving the employer a written request thereof three days in advance. Accordingly, the employee is not entitled to a severance payment.

### **3.3. DISMISSAL**

It should be stated at the outset that the Soviet Labour Code provided an exhaustive list of eight grounds for the termination of the employment contract on the initiative of the administration of the enterprise. During the decade after the restoration of independence the list of these grounds was continuously supplemented until their number has recently reached thirty. The Labour Code of 2002 followed another pattern: to reduce the number of grounds but to make them wide-ranging, in particular, with regard to a serious violations of employment contract on the part of employee and to economic, technological grounds on the part of the employer. The abstract nature in describing significant reasons which related to the economic, technological grounds to some degree was compensated by introducing a list of grounds which do not constitute a legitimate

reason to terminate employment relations (see 3.3.1). Besides there are numerous procedural requirements of imperative nature as well as statutory guarantees for certain groups of employees.

Today in Lithuania there are basically two main groups of grounds for the termination of the employment relationship on the initiative of an employer. The distinction between these two groups depends on nature of fault on the part of an employee:

- 1) Dismissal on disciplinary grounds (without notice) (see 3.3.2):
  - a. Gross breach of work duties (a qualified breach of labour discipline);
  - b. Repeated negligence in the performance of the work duties or the violation of the work discipline if the disciplinary sanction was already imposed on employee during the last 12 months (repeated breach of labour discipline);
- 2) Dismissal on the grounds which are not related to any misconduct on the part of the employee (with notice):
  - a. Significant reasons related to the economic, technological grounds such as the restructuring of the workplace, as well as for other similar reasons attributed to the employer (see 3.3.4). This is the most important and popular ground for dismissals. There is a new issue introduced by the Labour Code 2002—the obligation of an employer to hold prior consultations with the employees' representatives in the event of an intended dismissal of at least two employees on economic or technological grounds, as well as due to the restructuring of the workplace;
  - b. Significant reasons are related to the qualification, professional skills of an employee but not related to any misconduct on the part of employee (see 3.3.3). It pertains to a small group of circumstances rarely used by employers in practice;
  - c. Specific grounds for certain categories of employees provided by special norms or special acts (fixed-term employees, including short fixed-term employees and seasonal workers, employees during the period of their probation, heads of companies, teachers

and educators, employees in the companies in the bankruptcy proceedings).

The notion of a “socially unjustified” dismissal is unknown in the Lithuanian labour law system. An employer may terminate on his initiative an open-ended employment contract with an employee only for significant reasons. They are understood as substantial grounds listed above. If proven, their existence justifies the termination of the employment relationship. The grounds for dismissal shall be established by the law. However, there is an exceptional case of fixed-term employees for which a resolution of the Lithuanian Government provided additional grounds for the contract termination. This was possible after the Labour Code has assigned the Government to stipulate the peculiarities of the conclusion and termination of certain types of contracts of employment (e.g. short term fixed-contracts, contracts with seasonal workers etc.).

If the contract is terminated without a substantial ground, the court shall declare the dismissal unlawful. The court will come to the same conclusion, if a gross breach of the procedure of contract termination has been established.

### **3.3.1. DISMISSAL CONTRARY TO FUNDAMENTAL RIGHTS OR CIVIL LIBERTIES**

Lithuanian Labour Code provides a list of grounds for dismissal. In addition, it stipulates the list of grounds which do not constitute a legitimate reason to terminate employment relations (Article 129 (3) Labour Code):

- Membership in a trade union or involvement in the activities of a trade union beyond the working time or, with the consent of the employer, also during working time;
- Performance of the functions of an employees’ representative at present or in the past;
- Participation in the proceedings against the employer charged with violations of laws, other regulatory acts or the collective agreement, as well as application to administrative bodies;
- Gender, sexual orientation, race, nationality, language, origin, citizenship and social status, belief, marital and family status, convictions or views, membership in political parties and public organisations;

- Age;
- Absence from work when an employee is performing military or other duties and obligations of the citizen of the Republic of Lithuania in cases prescribed by laws.

Dismissals for listed reasons refer to an absence of significant reasons, and they shall always be qualified by the court as unlawful. In this case, general rules of reinstatement applies: the court shall reinstate the employee in his previous job under the same conditions and award him the average wage for the entire period of involuntary idle time from the day of dismissal from work until the day of the execution of the court decision. If the court establishes that the employee may not be reinstated in his previous job due to economic, technological, organisational or similar reasons or because he may be provided with conditions not favourable for work, it will pass a decision to recognise the termination of the employment contract unlawful and award him a severance pay depending on the length of employment at the enterprise of the employer (see 3.1. p. 5) as well as the average wage for the period of involuntary idle time from the day of dismissal from work until the effective date of the court decision. If the termination of the contract is declared void, the damages of a non-economic loss may be awarded. In practice there are no cases of this kind of dismissals because each dismissal shall be based on substantial grounds listed in the law.

The organisation of or the participation in the lawful industrial action cannot involve a dismissal, but in case of an illegal industrial action, disciplinary sanctions, including a dismissal, may be imposed on the employee. Dismissals based on pregnancy, absence from work during maternity leave, absence from work in order to care for dependants for reasons of their illness or accident would be considered illegal.

There are specific guarantees against dismissals with regard to pregnant women and employees raising children. An employment contract may not be terminated with a pregnant woman from the day on which her employer receives a medical certificate confirming pregnancy, and for another month after the maternity leave, except dismissals on the grounds other than the will of the parties (see 3.2) and the expiry of the short fixed-term contract. Employment contracts with employees raising a child (children) under three years of age may not be terminated due to economic reasons.

Employees, who are elected to representative bodies of employees (members of the body of trade union at the enterprise or of the works council, health and safety committees), shall not be dismissed for economic reasons without a prior consent of the

body concerned during the period for which they have been elected (see 3.3.4). Members of the European Works Council, of the Works Council of a European Company or special negotiating bodies enjoy even broader protection covering also dismissals on disciplinary grounds (see 3.3.2).

In addition, the Labour Code clearly prohibits the termination of the employment contract on economic, technological grounds and other similar reasons not related to the misconduct on the part of the employee during the period of temporary absence of work as a consequence of annual or special-purpose leave, illness or accident, whether or not arising out of the risk of the employment itself (see below), absence of work because of a call to fulfil active national defence service or other duties of a citizen of the Republic of Lithuania. Article 133 of the Labour Code provides guarantees to employees who have contracted a disease or have been injured at work. Employees, who have lost their functional capacity as a result of injury at work or an occupational disease, shall retain their work position until they recover their functional capacity or a disability is established according to the prescribed procedure. An employment contract with an employee having an established disability may be terminated with a notice only and paying a severance payment (see 3.3.2). Employees, who become temporarily incapable of work for other reasons (not-related to injury at work or an occupational disease) retain their position if they are absent from work for not more than 120 successive days or for not more than 140 days within the last 12 months, unless legal acts provide that in the case of a specific disease the work position shall be retained for a longer period (e.g. – for 182 successive days in case of tuberculosis).

*Criminal sanctions.* The dismissal of a pregnant employee had been for a long time explicitly prohibited by the Criminal Code of Lithuania. The new Criminal Code follows a broader approach. Article 169 of the Criminal Code of 28 October 2002<sup>12</sup> establishes a general clause of criminal liability of a natural person who has committed discriminatory action on the grounds of sex, sexual orientation, race, nationality, language, origin, social status, belief, convictions or views shall be punished with public work, arrest or imprisoning till 3 years. The courts and state prosecutors have not used this very extensive and abstract norm so far.

*Administrative sanctions.* The Act on Equal Opportunities of 18 November 2003<sup>13</sup> obliges the employer to apply in the process of dismissal equal criteria irrespective

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<sup>12</sup> State Gazette, 2002, no 89-2741.

<sup>13</sup> State Gazette, 2003, no 114-5115.

of age, sexual orientation, disability, racial or ethnic origin, religion or beliefs of an employee. Administrative sanctions on the employer may be imposed by the Ombudsmen of Equal Opportunities of the Republic of Lithuania. Furthermore, administrative sanctions may be imposed on employers by the Ombudsmen of Equal Opportunities of the Republic of Lithuania for the termination of the employment contract based on sex (Article 6 Equal Opportunities Act of Women and Men of 1 December 1999<sup>14</sup>). The persecution of an employee for a complaint or participation in legal proceedings against an employer is explicitly prohibited by the Act on Equal Opportunities and The Equal Opportunities Act of Women and Men of 1 December 1999<sup>15</sup>, if the complaint or the proceedings concern a discriminatory act of an employee based on gender, age, sexual orientation, disability, racial or ethnic origin, religion or beliefs. Administrative sanctions on the employer may be imposed by the Ombudsman of Equal Opportunities of the Republic of Lithuania. Administrative sanctions imposed by Equal Opportunities Ombudsman include fines from 100 LTL (29 EUR) to 2000 LTL (580 EUR) (Article 41-6 (1) of the Administrative Penalties Act<sup>16</sup>). The second violation in a row by the person is punishable with a fine of 2000 LTL (580 EUR) to 4000 LTL (1160 EUR).

*Compensation of non-economic loss* of an employee is guaranteed by Article 250 of the Labour Code. There is no limitation in the amount of compensation which is ordered by the court.

### **3.3.2. DISMISSAL ON DISCIPLINARY GROUNDS**

#### **1) Substantive provisions**

The termination of the employment contract on the initiative of the employer on grounds related to misconduct on the part of the employee may be based on:

- A gross breach of work duties (a qualified breach of labour discipline);
- Repeated negligence in the performance of the work duties or the violation of the work discipline if the disciplinary sanction was already imposed on employee during the last 12 months (a repeated breach of labour discipline).

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<sup>14</sup> State Gazette, 1998, no 112-3100.

<sup>15</sup> State Gazette, 1998, no 112-3100.

<sup>16</sup> State Gazette, 1985, no 1-1.

In both cases the dismissal is understood as a disciplinary sanction that is only applied to the employee who has committed a breach of labour discipline. The breach of labour discipline is defined by law as a non-performance or improper performance of labour duties through the employee's fault. These duties may be consolidated in legislation, collective agreements and individual employment contracts, internal work regulations which normally define the procedure of work and behaviour within enterprise, other normative legal acts.

When establishing two grounds for dismissal related to misconduct on the part of the employee, the Lithuanian labour law distinguishes between the repeated and the qualified breach of labour discipline. The repeated disciplinary sanction presupposes two breaches of discipline in a row though the law does not specify factors which may identify the violations of work discipline. As far as the qualified breach of labour discipline is concerned, the Labour Code gives its definition and provides a non-exhaustive list of example violations of labour discipline which are to be regarded as gross breaches allowing terminating the contract of employment. Article 235 (1) of the Labour Code defines a gross breach of work duties as a breach of labour discipline involving gross violation of the provisions of laws and other legal acts which directly regulate the employee's work, or any other gross transgression of work duties or the prescribed work regulations. According to the law, the gross breach of work duties may involve:

- Improper conduct with the visitors or customers or any other acts which directly or indirectly violate a person's constitutional rights;
- Disclosure of state, professional, commercial or technological secrets or communicating them to a competing enterprise;
- Participation in the activities which, under the provisions of laws, regulatory acts, work regulations, collective agreements or employment contracts, are incompatible with the functions of work;
- Taking advantage of one's position to get unlawful income for oneself or other persons or for some other personal purposes, arbitrary behaviour or bureaucracy;
- Violation of equal opportunities or sexual harassment of colleagues, subordinates or customers;
- Refusal to provide information where laws, other regulatory acts or work regulations obligate one to provide it, or provision of knowingly false information in those cases;

- Acts with elements of theft, fraud, appropriation or embezzlement of property, unlawful taking of a reward even though these activities did not involve the employee in criminal or administrative liability;
- Where, during the working time, the employee is under the influence of alcohol, narcotic or toxic substances, with the exception of cases where intoxication was caused by production processes at the enterprise;
- Absence from work throughout the whole day (shift) without any substantial cause;
- Refusal to undergo a medical check-up where such checks are obligatory;
- Other offences which are in gross breach of work procedure.

The list aims at giving the impression to the parties what cases of conduct shall be regarded by the courts and by the employers as providing a possibility to terminate the contract.

Dismissal is considered as the most severe sanction compared with the other two types of disciplinary sanctions (caution and reprimand). There is no provision directly establishing the rule that a dismissal on disciplinary grounds should be considered only as the last resort (principle of „ultima ratio“), but the law requires it in another way. According to Article 238 of the Labour Code, when imposing a disciplinary sanction the employer must take into account:

- The gravity of the disciplinary breach and its consequences;
- The degree of the employee's guilt;
- Circumstances under which the breach occurred;
- Previous performance of the employee at work.

If the court is of an opinion that the above circumstances were not taken into account or were taken insufficiently, it may recognise the dismissal unlawful and reinstate the employee. There is no special rule that irrespective of the ground invoked or the seriousness of the employee's misconduct the dismissal is justified only if the misconduct has rendered a continuation of the employment relationship impossible or unreasonable and difficult for the parties, in the light of objective tests. Basically, if there are grounds for disciplinary sanctions as described above, the employer may impose a dismissal on the employee regardless of the above considerations. However, the said considerations may be helpful for an employer to demonstrate before the court the gravity of the disciplinary breach and its consequences and to prove the validity of the dismissal.

## **2) Procedural requirements**



The procedure of the termination of the employment contract on the initiative of the employer on the grounds related to misconduct on the part of the employee is regulated by the Labour Code in a strict and imperative manner. The parties of a collective agreement or an individual labour contract may not change these rules making the situation less favourable for employees compared with that established by the law.

Before imposing a dismissal as a disciplinary sanction, the employer must render a request in writing for the employee to provide an explanation in writing about the breach of labour discipline. The explanation of the employee should allow a careful investigation of the case. If, within a period set by the employer, the employee fails to provide his explanation without a substantial reason, a dismissal may be performed without an explanation. A dismissal shall be performed by an order (instruction) of the employer or the administration and the employee shall receive a notice of it with his signature.

A dismissal shall be imposed immediately after the breach of discipline is disclosed but not later than within one month after the day when the breach was disclosed, excluding the period of time when the employee was not available at work due to illness, posting or on leave, and where criminal proceedings against him were started, but not later than within two months from the termination of the criminal proceedings or from the day when the court judgement became effective. A disciplinary sanction may not be imposed after a lapse of six months from the day when the breach was committed. Where a breach of labour discipline was disclosed during an audit or in the course of stocktaking pecuniary or other assets, a disciplinary sanction may be imposed not later than within two years after the day of the commission of the breach.

Usually the disciplinary sanction may be appealed against in a dispute resolution procedure, but the circumstance that there are no employment relationships anymore limits the number of the bodies for a dispute resolution to one body—the court. The court has a right to lift the sanction taking account of the gravity of the disciplinary breach, the circumstances under which it was committed, the employer's previous work and conduct, whether the sanction is in proportion to the gravity of the breach, and if the procedure of imposing the sanction was complied with.

Laws provide cases when a dismissal as a disciplinary sanction may be imposed only subject to a prior consent of an appropriate body with regard to the dismissal of:

- *The chairman of the trade union and the chairman of the works council* at the enterprise may not be dismissed without a prior consent of the body concerned during the period for which they have been elected. This guarantee is applicable in case of a repeated breach of labour discipline only (Article 134 (1) Labour Code); a collective agreement may provide that this guarantee shall also apply to other employees. The responsible body of trade union shall take a decision as to whether to satisfy the employer's application for its consent for the dismissal of a representative of the employees within 14 days from the receipt of the said application. The representative body of employees shall submit in writing its consent or refusal to dismiss an employee. If the representative body of employees fails to reply to the employer within this period, the employer shall be entitled to terminate the employment contract. The employer shall be entitled to contest the refusal of the works council or trade union body in the court. The court may reject such a decision if the employer proves that this decision substantially violates his interests without proving the legitimacy of the intended dismissal. The employee, who has been dismissed in violation of these requirements, must be reinstated in his former position by a decision of the court.
- *Members of the works council of a European company, members of a special negotiating committee* related by employment relations to the European Company registered in the Republic of Lithuania, or its subsidiary or a participating company, a concerned subsidiary as well as to an establishment of a European company operating in the Republic of Lithuania as well as the members of the supervisory or administrative body of the European company elected by employees or their representatives (Article 8 (1) of the Law on Involvement of Employee in the Decision Making in the European Company<sup>17</sup>) may be not dismissed during their membership in the works council or the special negotiating committee on the initiative of the employer without the consent of the employees' representative that appointed them (i.e. a local works council or a trade union). If these members were elected by a meeting or conference of the employees, the territorial division of the State Labour Inspectorate shall have the right to give its consent for their dismissal.

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<sup>17</sup> State Gazette, 2005, no 67-2407.

Interesting to note, that here the Lithuanian legislation provides for more protection as for employees' representatives at enterprise level: they may be not dismissed due to economic reasons as well as on the grounds related to misconduct on the part of the employee (qualified or repeated breach of labour discipline). Analogous protection is provided to the *members of the European works council, members of the special negotiating body* related by employment relations to the undertaking or establishment situated or operating in the Republic of Lithuania (Article 13 of the Law on European Works Councils<sup>18</sup>).

The Labour Code prohibits terminating the employment contract with a pregnant woman from the day when her employer receives a medical certificate confirming her pregnancy and for another month after the maternity leave in cases of misconduct on the part of the pregnant employee. It is also prohibited to dismiss the employees during the period of their temporary disability or during their leave or called up to fulfil active national defence service or other duties of a citizen of the Republic of Lithuania.

There is no entitlement to a severance payment.

There is no requirement to submit a notice prior to dismissal.

### **3) Effect of dismissal. Severance payments and other forms of income protection**

The employment relationship is terminated as a consequence of dismissal.

The employer is required to settle accounts with an employee being dismissed by the end of the last working day at the latest. He must pay the employee all the amounts due, fill in the employee's state social insurance card and the employment contract in accordance with the established procedure, and, if the employee so desires, the employer must issue him a certificate about his work. In any case, if the sum due is not paid by the employer, it has no effect on the validity of dismissal. A delay in settling accounts with an employee gives the ground to claim the payment before the court. If the court establishes that the delay was not on the part of the employee, it should order the employer to pay the sum due and, in addition, to pay the employee the average pay for the time of delay.

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<sup>18</sup> State Gazette, 2004, no 39-1271.

The rights already acquired by the employee concerning the pay, compensatory payments or other payments (e.g. compensations related to posting, compensation for the use of one's own tools, compensation for unused annual leave etc.) of the employer which are stipulated by law, collective agreement or individual employment agreement are not affected. The Labour Code only allows deducting the already paid vacation pay from the total wage of the employee when dismissing him before the end of the working year for which he was given the annual leave, to recover from him the sums paid for the days of the leave when he did not work. The deduction is not allowed where the employee is dismissed from work without any fault.

In 2005 there was a new provision introduced in the Labour Code allowing to compensate for the employer's expenses incurred by him during the last working year in relation to the employee's training, in-service training, study visits etc. if the employment contract is terminated on the grounds related to the fault on the part of the employee concerned. However, this compensation is possible if the employment contract contains an explicit provision on this issue.

The entitlements already acquired or being acquired under public retirement pension schemes are not affected. In Lithuania private pension schemes and private sickness insurance schemes hardly exist at all; however, there is no legal obstacle to restrict the conferment of those entitlements in respective normative acts providing for such entitlements.

Dismissed employees are entitled to all unemployment benefits (all free of charge services of the State Labour Exchange including vocational guidance, vocational training, information on job vacancies, public works, works financed by the Employment Fund). Since the ground for the termination of the employment contract was directly linked to the fault on the part of the employee, the waiting period for the unemployment compensation is not 8 days or 1 month, but three months. In any case the payment of the unemployment compensation depends on the period of obligatory insurance against unemployment (not less than 18 months during the period of the last 36 months) whilst the amount of compensation to some extent depends on the received salary.

The non-payment by the employer of the sums due or the avoidance of the employer to make a full settlement of accounts with the employee does not affect the validity of termination of the employment relationship.

#### **4) Remedies**

An employee who considers his dismissal unlawful may bring the action of reinstatement before the court of general jurisdiction (civil court) within 1 (one) month after the termination of the relationship (a general term for the court action in case of the termination of the employment relationship). The term may be extended if the action was delayed due justifiable reasons. A claim of another nature (e.g. related to unpaid sums etc.) shall be brought within 3 (three) years. The action of reinstatement is only possible when the employment contract has been terminated.

Trade unions shall not bring the action on behalf of employees; however, they may represent members in the civil procedure. When a trade union represent its member in an individual case the written or even oral authorisation from the member is not needed, the trade union shall prove the membership of the employee and present the documents proving the representative status of a natural person acting as a representative: chairperson of the trade union body presents the documents concerning his/her election to the post, the legal adviser, jurist or employee of the trade union presents the authorisation from trade unions, and the lawyer presents the contract of representation before the court concluded with the trade union.

Neither trade unions nor works councils have statutory rights to be involved in the procedure of dismissal except for the case of dismissal of the chairman of a trade union or the chairman of a works council or the employees' representatives appointed by them to bodies of trans-national employees' representation (members of the European Works Council, the Works Council of a European Company or special negotiating bodies etc.). Interesting to note, that the Supreme Court of Lithuania has recently recognised the right of the trade union to initiate legal proceedings before the court in case of dismissal of a trade union official without prior consent of the competent body of the trade union. The right was derived from Article 18 of the Law on Trade Unions of 21 November 1991, which entitles the trade unions to demand the annulment of the employer's decisions which violate labour, economic, and social rights of their members provided by the laws of the Republic of Lithuania. According to the said provisions the employer shall consider the said demands within 10 days in the presence of the representatives of the trade union, and in failure to timely consider the demand of the trade union or refusal to satisfy the demand, the trade union is entitled to appeal to the court. Notably, this provision was not used in practice as far as dismissal is concerned. The court held that in case of a clear breach of the law as, for instance, the dismissal of a trade union's official without a prior consent of the

competent body of the trade union, the legal dispute between the trade union and the employer may be initiated in the court but further implications of the legal proceedings on the executed termination of individual employment contracts still remain unclear.

The Code of Civil Procedure of 28 February 2002 establishes special rules with regard to the resolution of individual labour cases. First of all, claimants (employees) are exempt from the stamp-duty. Alongside with the court of employer's neighbourhood, the court on the territory where the work is performed, was performed or shall be performed is competent for any labour case. The court has very wide discretion to protect the employee's interests *ex officio*. In particular, the court may collect evidence on its own initiative, to involve the third party in the procedures, to exceed the demands of the claimants or to apply alternative means for the protection of the infringed rights. In 30 days, the case shall be prepared for hearings, and a decision shall be taken not later than in 30 days after the beginning of the hearings. However, in practice courts rarely meet these deadlines. Despite the fact that the Code of Civil Procedure provides for the possibility to suspend the disputed action of the plaintiff with a court's order of interim relief, the option is not applicable in all cases of dismissals because the action is only possible when the employment contract is terminated. The Labour Code provides specific rules as regards a speedy execution of the court decisions in labour cases before the decision has taken an effect (in general, 30 days after announcing the decision or after announcing the decision of the court of appeal). In particular, the court *shall* issue an interim relief on the prompt reinstatement (on the next day) of the unlawfully dismissed employee into his previous job and/or on the award of a wage, the parts of it not exceeding the average monthly wage. The court *may*, on the claimant's application or on its own initiative, issue an interim relief to execute without delay of a decision or a part thereof on the formulation of dismissal or in other cases if the execution of the decision becomes not feasible or difficult due to special circumstances. The rules on interim relief are of mandatory nature in the Labour Code, but the Code of Civil Procedure gives differently to the judge full discretion to issue or not the interim relief prior to the decision of the court taking an effect. However, the courts quite often take the option.

The failure by the employer to execute a decision of the court in labour cases or a failure to execute the decision to change the formulation of dismissal, on the demand of the employee the court shall make a ruling to recover for the employee's benefit the wage for the entire period until the day of its execution.

The former Code of Civil Procedure had an interesting rule on non-recourse in labour cases: if, under the cassation procedure, the decision of the court was repealed, the recourse of sums of money was permitted only in case the repealed decision was based on false evidence given by the plaintiff or forged documents presented by the latter. However, the new Code of Civil Procedure does not maintain such regulation.

There is no special rule governing the burden of proof; however, the judicial practice has developed a principle that the party of the dispute that exclusively possesses evidentiary materials shall bear the burden of proof. Thus the burden of proof is always on the employer to demonstrate the existence of grounds for terminating the employment relationship.

The court must verify the existence of the ground for dismissal and first of all, assess the conformity of the procedure of dismissal to the requirements laid down in the Labour Code and then evaluate whether the disciplinary sanction (dismissal) was imposed by the employer taking into account:

- The gravity of the disciplinary breach and its consequences;
- The degree of the employee's guilt;
- Circumstances under which the breach occurred;
- Previous performance of the employee at work.

If the court is of the opinion that the above circumstances were not taken into account or were taken insufficiently, it may recognise the dismissal unlawful.

The non-payment by the employer of the sums due or the avoidance of the employer to make a full settlement of accounts with an employee does not affect the validity of the termination of the employment relationship, but gives grounds to claim the payment before the court. If the court establishes that the delay was not on the part of employee, it should order the employer to pay the sum due and, in addition, to pay the employee an average pay for the time of delay.

#### **5) Unlawful dismissals**

The court finds that an employee is dismissed without a valid reason if:

- There was no breach of labour discipline proven;
- The fact of violation by the employee concerned is not proven;
- The dismissal cannot be justified as a proper disciplinary sanction taking into account the gravity of the disciplinary breach and its consequences, the degree of the employee's guilt, circumstances under which the breach occurred, previous performance of the employee at work.

- In case of dismissal on the ground of repeated disciplinary sanction, the first disciplinary sanction is not valid (the term of its validity has expired or the sanction was lifted in the previous legal proceedings or current legal proceedings).

Despite the fact, that the law gives the right to the court to reinstate the employee or declare the dismissal unlawful in case of the breach of procedure of the contract termination, courts clearly differentiate between gross breaches of the procedure, which results in the reinstatement of the employee, and other procedural infringements, which do not invoke the illegitimacy of termination. Gross breaches of the procedure usually include the following:

- Dismissal as a disciplinary action was decided by the employer without any written explanation from the employee, unless the explanation was not submitted within the reasonable limit of time established by the employer;
- The time limits for imposing a disciplinary sanction were not observed;
- The dismissal was declared without a prior consent of an appropriate body (a trade union or a works council), unless there is a effective judgement of the court that rejects the refusal of the body to give consent;
- Statutory guarantees against the dismissal provided for certain groups of employees (pregnant employees, employees during the period of their temporary disability or during their leave or called up to fulfil active national defence service or other duties of a citizen of the Republic of Lithuania) were not observed.

Procedural irregularities of other types (failure to ask in written form for an explanation, failure to inform the employee about the decision to impose a disciplinary action in written etc.) are considered not substantial and do not influence the validity of dismissal. The fact that compensations or other sums due were not paid within the time provided for or the failure of an employer to respect other required rights or the rights currently being acquired do not affect the lawfulness or enforceability of the dismissal.

If the employee is dismissed without a valid reason or in gross breach of the procedure, the court shall reinstate him in his previous job and award him the average wage for the entire period of involuntary idle time from the day of his dismissal from work until the day of the execution of the court decision. Before 2003 the court was entitled to decide



on the continuation of the employment relationship on the request of the employee but on the ground that he, after the reinstatement, will be provided with conditions not favourable for work. The courts usually had satisfied all the requests of employees. The Labour Code today establishes a right to request compensation instead of reinstatement also due to economic, technological, organisational or similar reasons and does not identify the party that is entitled to request. Thus the court today may choose the termination of the employment relationship instead of the reinstatement at the request of the employee or employer on his initiative. If the court finds that the employee may not be reinstated in his previous job due to economic, technological, organisational or similar reasons, or because he may be provided with conditions not favourable for work, the court will pass a decision to recognise the termination of the employment contract as unlawful (in this case the employment contract shall be considered terminated from the effective date of the court decision) and order to award him:

- The average wage for the period of involuntary idle time from the day of dismissal from work until the effective date of the court decision; and
- A severance pay the amount of which is determined by the length of service of the employee concerned (under 12 months—one monthly average wage, from 12 to 36 months—two monthly average wages, from 36 to 60 months—three monthly average wages, from 60 to 120 months—four monthly average wages, from 120 to 240 months—five monthly average wages, over 240 months—six monthly average monthly wages). The severance payment shall be paid by the employer in this same manner as any other sum established by the effective decision of the court. The statutory conditions on granting the compensation and determining its amount are mandatory and the court must follow them. It differs from the situation before 2003 when the court was entitled to decide freely on the amount of compensation for the employee—up to 12 monthly average wages.

Courts in Lithuania have had cases where the compensation of the non-material damages of the employee was awarded in case of the unlawful termination of the contract.

There are no particular administrative or criminal penalties which may be imposed in case of an unlawful dismissal on disciplinary grounds, except for those constituting an independent ground for administrative or criminal liability (e.g. the

dismissal of an employee because of sex is considered a violation of equal rights of men and women and administrative sanctions may be imposed).

#### **6) Collective Agreements and Practice**

The law regulates the subject in a strict and imperative manner; and there is almost no room left for social partners to agree on substantial or procedural questions of dismissal. The exception is the statutory provision on a possibility to specify in the collective agreements the categories of employees who may not be dismissed from work without consent of competent bodies. From the theoretical point of view, collective agreements may provide for more favourable provisions which differ in some respects from theory and in particular it concerns provisions setting out the rules of internal procedure, involvement of the employees' representatives etc. However, in practice there are no collective agreements containing rules on substantial or procedural aspects of the termination of the employment contract on disciplinary grounds. This same applies for individual agreements.

#### **7) Relationship with other forms of termination**

There is no direct relationship between dismissal on disciplinary grounds and other types of termination of the employment contract as far as the rules of compensation are concerned. It is widely accepted that in case of a justified termination of the employment contract on disciplinary grounds, rights and interests of the employee shall be protected to the minimum extent.

#### **8) Special arrangements**

According to Article 231 of the Labour Code, the labour discipline of individual categories of employees in certain sectors and branches of national economy shall be regulated by laws, disciplinary statutes and regulations or other special acts. The special acts may provide for special duties of certain categories of employees as well as additional disciplinary sanctions to be applied in their respect.

The Discipline Statute of the Employees of Railways, adopted by the Resolution no 118 of the Government of the Republic of Lithuania<sup>19</sup> establishes additional duties and obligations for railway employees, supplementary grounds for disciplinary sanctions and specialised sanctions (e.g. the deprivation from a motorman of the right to drive and transfer to less qualified job for a period up to 1 year, transfer to the work not related to the provision of services to passengers for a period of up to three months), if

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<sup>19</sup> State Gazette, 1995, no 10-225.

compared with the Labour Code. The Statute provides an additional guarantee in respect to the employees who are members of the trade union—their dismissal from work on disciplinary grounds shall be subject to prior consent of the representative body of a trade union, except for strictly specified cases.

The Code of Conduct of the Customs of the Republic of Lithuania was adopted on 18 October 2002 by the Department of Customs under the Ministry of Finance. This Code provides for additional duties of employees (e.g. outside the work place and beyond working hours) and covers not only public servants but also employees working under employment contracts.

Specific tasks and obligation of employees with regard to the work discipline are consolidated in the Statute of the Service on the Ships<sup>20</sup> and Statute of the Service on the Ships' internal waters<sup>21</sup>.

### **3.3.3. DISMISSAL ON THE INITIATIVE OF THE EMPLOYER FOR REASONS RELATED TO THE CAPACITIES OR PERSONAL ATTRIBUTES OF THE EMPLOYEE, EXCLUDING THOSE RELATED TO MISCONDUCT**

The Lithuanian Labour Code provides that the contract of employment may be terminated on significant grounds related to the qualification, professional skills or conduct of an employee without any fault on the part of the employee concerned (Article 129 (1) Labour Code). However, the termination of the employment relationship on the above ground is formally and practically regarded as an economic dismissal with a notice. Accordingly, all rules concerning redundancy are fully applicable (see 3.3.4.). As far as an illness of the employee is concerned, the legislator distinguishes between:

- Employees, who have lost their functional capacity as a result of injury at work or occupational disease, and
- Employees, who become temporarily incapable of work for other reasons.

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<sup>20</sup> State Gazette, 1996, no 121-2858.

<sup>21</sup> State Gazette, 1998, no 12-283.

The first group of employees shall retain their work position until they recover their functional capacity or a permanent disability is established. An employment contract may be terminated on the initiative of the employee with a notice (see 3.3.4) only after the disability of the employee is established by a competent authority. Employees who have become temporarily incapable of work for other reasons retain their work position if they are absent from work due to temporary incapacity for work for not more than 120 successive days or for not more than 140 days within the last 12 months, unless laws and other acts provide that in the case of a specific disease the work position shall be retained for a longer period (e.g. for 182 successive days in case of tuberculosis). These periods shall not include the period during which the employee received a state social insurance benefit for attending a family member or an allowance in cases of epidemic diseases. For other questions on dismissal regarding illness of the employee see Section 3.3.4.

#### **3.3.4. REDUNDANCY (TERMINATION OF THE CONTRACT OF EMPLOYMENT ON THE INITIATIVE OF THE EMPLOYER ON THE GROUNDS OF ECONOMIC, TECHNICAL, STRUCTURAL OR SIMILAR NATURE PERTAINING TO THE FIRM)**

The Soviet labour law provided three grounds for the termination of the employment contract on the initiative of the enterprise administration without any fault on the part of the employee. During the decade after the restoration of Lithuania's independence, the list of these grounds has been continuously supplemented. The Labour Code of 2002 reduced the number of grounds making them wide-ranging: the employer may terminate the contract on his initiative without any fault on the part of the employee concerned only for significant reasons.

It is often argued that the concept of an exhaustive list of grounds for dismissal is turned upside down, and the legislator has only established the general principle—the employee may be dismissed from work on the initiative of the employer

without the fault on his part only for “significant reasons”. However, the reverse interpretation is also estimable according to which the list of grounds for dismissal remains but becomes very short and rather conceptual. With regard to the wording of Article 129 (1) of the Labour Code, for the contract termination the following circumstances are considered significant:

- Circumstances related to the qualification, professional skills or conduct of an employee (see 3.3.3);
- Economic, technological reasons or the restructuring of the workplace, as well as other similar significant reasons.

Irrespective of the choice of conception, a conclusion can be drawn that the exhaustive list of grounds for the economic termination of the employment contract has been abolished. Following a new concept of “significant reasons”, the employer shall decide on the necessity of dismissal and on the exact reasoning for the termination of the employment contract. It remains within the courts’ responsibility to verify the “significance” of the provided reasons for dismissal and to examine whether the procedural requirements were fulfilled.

“Redundancy” is understood in Lithuania as termination of an employment contract on the initiative of the employer (with a notice) without any fault on the part of the employee due to economic, technological grounds or the restructuring of the workplace, as well as other similar significant reasons. These cases are mainly regulated by Article 129 and other provisions of the Labour Code. These provisions are applicable to all enterprises irrespective of their size and legal status.

### **1) Substantive conditions**

The employee may be dismissed from work on the initiative of the employer without the fault on his part for “significant reasons”. According to Article 129 (2) of the Labour Code, the term of significant reasons encompasses economic, technological reasons or the restructuring of the workplace, as well as other similar significant reasons.

In the court practice economic reasons are understood as economic necessity that can justify the dismissal. Technological reasons are defined as changes in the process of technology at the workplace which cause the employee’s inability to perform the function agreed by the employment contract because these functions are not needed any more or the performance requires a smaller number of employees. Structural changes are changes in the enterprise or a part of the enterprise of organisational nature involving the refusal of certain activities. The structural changes should be real: based on the decision of

a competent body of the enterprise as well as its real implementation. A change of the owner of an enterprise, changes of subordination, any merger by forming a new enterprise, a transfer of the undertaking as well as a transfer of part of the undertaking, a division by setting up new enterprises, a division by acquisition or a merger by acquisition may not be deemed as structural changes constituting a legitimate ground for redundancy, pursuant to Article 138 of Labour Code.

The liberalisation of the regulation of economic dismissals may be illustrated by an example: until 2003 the decrease in the sales or income as well as the over-production had not been considered by the courts as justifying the dismissal because the law required factual structural changes to be undertaken in order to cope with financial or production problems. Today a continuous decrease in turnover, losses and similar circumstances would justify the redundancy of the employee, if the employer proves that there are reasons of economic or similar nature which necessitate the dismissal of the employee in question.

The law distinguishes certain groups of employees requiring a high degree of social protection. An employment contract with employees, who will be entitled to the full old-age pension in not more than five years, persons under 18 years of age, disabled persons and employees raising children under 14 years of age may be terminated only in extraordinary cases, where the retention of the employee would substantially violate the interests of the employer. Substantial violations of the employer's interests shall be established by taking into account a special nature of the activity of the employer and particular circumstances of the redundancy concerned and individual reasons thereof. In the court practice these are examples where due to the undertaken changes at the workplace the performance of work of a particular employee is absolutely not needed or the employee is on along idle time and there is no possibility to transfer him to another job etc.

The dismissal of an employee from work without any fault on the part of the employee concerned is allowed only if the employee cannot, with his consent, be transferred to another work. The employer is obliged during the whole procedure of dismissal to seek for transfer of the employee to any other available position with the consent of the employee concerned.

If there are several employees who could be dismissed and the employer must take choice, the law obliges him to give priority to certain groups of employees. The right of priority to retain the job shall be accorded to employees:

- Who sustained an injury or contracted an occupational disease at that workplace;
- Who are raising children (adopted children) under 16 years of age alone or caring for other family members recognised as the disabled of group I or II;
- Whose continuous length of service at that workplace is at least ten years, with the exception of employees, who have become entitled to the entire old-age pension or are in receipt thereof;
- Who will be entitled to the old-age pension in not more than three years;
- To whom such a right is granted in the collective agreement;
- Who are elected to the representative bodies of employees.

The priority for the employees who are raising children or because of seniority or to whom such a right is granted in the collective agreement is guaranteed only when their qualification is not below the qualification of the other employees of the same speciality.

## **2) Formal and procedural requirements**

The procedure for redundancy is regulated by the Labour Code in an imperative manner. Before the factual dismissal and settling of accounts, several stages of the procedure could be distinguished:

- Information and consultation with the employees' representatives;
- A consent of a competent body of the employees' representation and involvement of public bodies (if applicable);
- Notification of the employee on the future dismissal;
- Conferment of time-off to the employee for seeking a new job;
- Dismissal and settlement of accounts.

There are no statutory time limits for these stages, except for those related to the notice period.

*Information and consultation with the employees' representatives.* In the event of an intended dismissal of employees on economic or technological grounds, as well as due to the restructuring of the workplace, the employer must, prior to giving notice of the termination of an employment contract, hold consultations with the representatives of employees (trade union at the enterprise, works council) in order to avoid or mitigate negative effects of the intended restructuring. The conclusions of consultations shall be executed by drawing up a record that is signed by both parties. There is no rule on

providing information to employees who will be affected by the future dismissal after the said proceedings.

*A consent of a competent body of the employees' representation.* Laws establish cases when a dismissal of the employee is allowed with a prior consent of a competent body of the employees' representation with regard to the dismissal of:

- *Member of the trade union and member of the works council* at the enterprise; the collective agreement may provide that this guarantee shall also apply to other employees. A responsible body of the trade union must take a decision as to whether to satisfy the employer's application for its consent to the dismissal within 14 days from the receipt of the said application. The representative body of employees shall submit in writing its consent or refusal to dismiss the employee. If the representative body of employees fails to reply to the employer within this period, the employer is entitled to terminate the employment contract. The employer may contest the refusal of the works council or the trade union body in court. The court may reverse such a decision if the employer proves that the decision substantially violates his interests, and without proving the legitimacy of the intended dismissal. It is interesting to note that the lawfulness of the dismissal shall not be examined by court at this stage;
- *Members of the Labour Disputes Commission* at the enterprise level as well as members of the health and safety committee at the enterprise or workplace who are elected by employees may not be dismissed from work during their membership in the Commission;
- *Lithuanian members of the works council of a European company, members of a special negotiating committee as well as Lithuanian members of the supervisory or administrative body of the European company* shall not be dismissed during their membership in the works council or a special negotiating committee on the initiative of the employer without the consent of the employees' representative who appointed them (i.e. a local works council or a trade union). If these members were elected by a meeting or conference of the employees, the territorial division of the State Labour Inspectorate shall have a right to give its consent to their dismissal. This same applies to the *Lithuanian members of the European Works Council and members of the special negotiating body.*



There are no rules regulating the information of employees who will be affected by the future dismissal after the said proceedings.

The Labour Code prohibits to terminate the employment contract with a pregnant woman from the day on which her employer receives a medical certificate confirming pregnancy, and for another month after the maternity leave in cases of misconduct on the part of the pregnant employee and does not allow the employer to terminate the employment contract. The Labour Code also prohibits the dismissal of the employee during the period of temporary absence from work as a consequence of annual or special-purpose leave, illness or accident, whether or not arising out of the risk of the employment itself (see below), absence from work due to active national defence service or other duties of the citizen of the Republic of Lithuania (see 3.3.1)

*The involvement of public bodies.* In general, there are no provisions on the involvement of public authorities in the proceedings leading to redundancies, except those related to collective redundancies (see 3.3.4 p. 10).

*Conferment of the time-off.* During the period of notice the employer must grant the employee some time off from work to look for a new job in accordance with the procedure agreed between the employee and the employer. The length of the time-off shall not be less than ten per cent of the employee's working time during the period of notice. The employee shall retain his average wage for that time.

*Notification.* The employee shall be notified against his signature in writing on the future dismissal. The notice of the termination of an employment contract shall specify:

- Reasons for dismissal from work and motivation for the termination of the employment contract;
- The date of dismissal;
- The procedure for settling accounts with the employee being dismissed. This requirement does not necessarily involve the information on the amount of the severance payment, but the indication of kinds of all the payments and the date of their payment.

The general period of notice is two months, but for certain categories of employees (employees, who will be entitled to the full old-age pension in not more than five years, employees under 18 years of age, disabled persons and employees raising children under 14 years) the period of notice shall be at least four months in advance. The period of notice shall not include the period of sick leave or the annual leave of an

employee as well as the period of legal proceedings where the refusal to give consent of a competent body was disputed by the employer in court. The time limits are imperatively regulated, and the parties to the collective agreement or to the individual employment contract may not agree upon the periods that are less favourable for the employee.

*Dismissal and settlement of accounts.* By the end of the last working day at the latest the employer shall formalize the dismissal, i.e. fill in the employee's state social insurance card and the employment contract in accordance with the established procedure, and, if the employee so desires, the employer must issue him a certificate about his work. The employer must make a full settlement of accounts with the employee being dismissed from work on the day of his dismissal, unless a different procedure for settling accounts is provided by laws or an agreement between the employer and the employee. A delay in settling accounts with the employee gives grounds to claim the payment before the court. If the court establishes that the delay was not on the part of employee, it should order the employer to pay the sum due and, in addition, to pay the employee an average pay for the time of delay. The non-payment by the employer of the sums due or avoidance of the employer to make a full settlement of accounts with the employee does not affect the validity of the termination of the employment relationship.

Dismissals are planned and enforced by the employer in a unilateral way, except for cases of involvement of the employees' representatives and public bodies. There are no explicit stipulations on how the employee threatened with redundancy can defend himself against the intended dismissal. The judicial practice has developed a principle, that the employee who falls within the scope of application of certain guarantees against dismissal shall notify the employer about their protective status (e.g. pregnancy, membership in the body of the employees' representation etc. The failure to communicate these important circumstances may be considered by the court as a breach of the principle of honesty and the statutory protection may be refused.

### **3) Effects of Redundancy**

The employment relationship is terminated after the day of dismissal. It should be noted that the employer has a right not to execute the dismissal even if the notice was communicated to the employee and all other procedural requirements were satisfied.

The redundancy has no direct effect on the rights already acquired by the employee concerning the pay, compensatory payments or other payments (e.g. compensations related to posting, compensation for the use of one's own personal tools in

work, compensation for an unused annual leave etc.) of the employer that are stipulated by law, the collective agreement or the individual employment agreement are not affected. This same applies to the entitlements to unemployment benefits. The entitlements already acquired or being acquired under public retirement pension schemes or sickness insurance schemes are not affected either. In Lithuania, private pension schemes and private sickness insurance schemes are practically non-existent, but there is no legal obstacle to restrict the conferment of those entitlements in respective normative acts providing for such entitlements.

#### **4) Severance payments and other forms of income protection**

Despite the fact that in all cases the employee shall be notified in advance about the intended dismissal on the initiative of the employer on the grounds of economic, technical, structural or similar nature, he is additionally entitled to the severance pay depending on the length of service at that workplace:

- Under 12 months—one monthly average wage;
- 12 to 36 months—two monthly average wages;
- 36 to 60 months—three monthly average wages;
- 60 to 120 months—four monthly average wages;
- 120 to 240 months—five monthly average wages;
- over 240 months—six monthly average monthly wages.

The severance pay is paid by the employer when settling accounts with the employer, i.e. not later than on the last day of work.

If after the notice was handed out, the monthly average wage of the employee became lower than before without any fault on the part of employee, the previous monthly average pay shall be taken into account when calculating the severance pay.

#### **5) Remedies**

An employee who considers his dismissal unlawful may bring the action of reinstatement before the court of general jurisdiction (civil court) within 1 month after the termination of the relationship (a general term for court action in case of the termination of the employment relationship). The term of 1 month starts only with the reception by the employee of the written document on the termination (the order of the employer, the contract of the employment filled as regards the end of the relationship etc.), unless there is evidence that the employee refused to accept written documents. This term may be extended by the court if the action was delayed due to justifiable reasons. A claim of another nature (e.g. related to unpaid sums etc.) shall be brought within 3 years. The action

of reinstatement is possible only when the employment contract has been already terminated.

Trade unions shall not bring the action on behalf of the employees; however, they may represent them in the civil procedure. When a trade union represent its member in an individual case the written or even oral authorisation from the member is not needed, the trade union shall prove the membership of the employee and present the documents proving the representative status of a natural person acting as a representative: chairperson of the trade union body presents the documents concerning his/her election to the post, the legal adviser, jurist or employee of the trade union presents the authorisation from trade unions, and the lawyer presents the contract of representation before the court concluded with the trade union.

Neither trade unions nor works councils are involved in the legal proceedings before the court, except for the case of protected employees' representatives (see 3.3.4 p.2). The Supreme Court of Lithuania has recently recognised the right of the trade union to initiate legal proceedings before the court in case of dismissal of a trade union official without prior consent of the competent body of the trade union. The right was derived from Article 18 of the Law on Trade Unions of 21 November 1991, which entitles the trade unions to demand the annulment of the employer's decisions which violate labour, economic, and social rights of their members provided by the laws of the Republic of Lithuania. According to the said provisions the employer shall consider the said demands within 10 days in the presence of the representatives of the trade union, and in failure to timely consider the demand of the trade union or refusal to satisfy the demand, the trade union is entitled to appeal to the court. Notably, this provision was not used in practice as far as dismissal is concerned. The court held that in case of a clear breach of the law as, for instance, the dismissal of a trade union's official without a prior consent of the competent body of the trade union, the legal dispute between the trade union and the employer may be initiated in the court but further implications of the legal proceedings on the executed termination of individual employment contracts still remain unclear.

Since claimants in labour cases are recognised as the weaker party they shall be treated more favourably. Thus the Code of Civil Procedure of 28 February 2002 establishes special rules with regard to the resolution of individual labour cases. Claimants (employees) are exempt from the stamp-duty. Alongside with the court of the employer's neighbourhood, the court on the territory where the work is performed, was performed or shall be performed is competent for any labour case. In addition, during the proceedings

the court may collect evidence on its own initiative, to involve the third party in the procedures, to exceed the demands of the claimants or to apply alternative means for the protection of infringed rights. In 30 days the case shall be prepared for hearings and the decision shall be taken not later than in 30 days after the beginning of the hearings, but in practice the courts rarely meet these deadlines.

The burden of proof is always on the employer to demonstrate the existence of grounds for terminating the employment relationship and the correctness of the procedure.

Since only an already dismissed worker may wish to initiate a case of reinstatement, the action before the court does not suspend the effects of redundancy. However, the Labour Code provides specific rules as regards a speedy execution of the court decisions in labour cases before the decision has taken an effect (in general, 30 days after announcing the decision or after announcing the decision of the court of appeal). In particular, the court *shall* issue an interim relief on the prompt reinstatement (on the next day) of the unlawfully dismissed employee into his previous job and/or on the award of a wage, the parts of it not exceeding the average monthly wage. The court *may*, on the claimant's application or on its own initiative, issue an interim relief to execute without delay of a decision or a part thereof on the formulation of dismissal or in other cases if the execution of the decision becomes not feasible or difficult due to special circumstances. The rules on interim relief are of mandatory nature in the Labour Code, but the Code of Civil Procedure gives differently to the judge full discretion to issue or not the interim relief prior to the decision of the court taking an effect. However, the courts quite often take the option.

The failure by the employer to execute a decision of the court in labour cases or a failure to execute the decision to change the formulation of dismissal, on the demand of the employee the court shall make a ruling to recover for the employee's benefit the wage for the entire period until the day of its execution.

The persons on a low income may apply for legal service.

There are no particular administrative or criminal penalties which may be imposed in case of unlawful redundancy, except those constituting an independent ground for administrative or criminal liability, i.e. if the dismissal of the employee because of sex would be considered as a violation of equal rights of men and women; and administrative sanctions may be imposed.

## **6) Unlawful redundancies**

The court shall declare the dismissal unlawful, if it finds that the employee is dismissed without a significant reason or in violation of the procedure prescribed by laws.

The court establishes that an employee is dismissed without a significant reason if:

- There have been no economic, technical, structural circumstances or circumstances of similar nature that were used as a ground for dismissal;
- Circumstances, even if they were recognised as existing, do not justify the redundancy of the employee concerned.

The courts clearly differentiate between gross breaches of the procedure, which result in the reinstatement of the employee, and other procedural infringements, which do not invoke illegitimacy of the termination. The following breaches are treated as gross breaches:

- A failure of the employer to fulfil his obligation to seek for an alternative for the redundancy, i.e. to transfer the employee to another job with his consent. Such failure is established if the employee was not offered another available job;
- The priority right to retain the job specified in the law or collective agreement was not observed by the employer;
- Statutory guarantees against the dismissal of certain groups of employees (pregnant employees, employees during the period of their temporary disability or during their leave or when they are called up to fulfil active national defence service or other duties of the citizen of the Republic of Lithuania) were not observed;
- The dismissal was executed without a prior consent of the competent body of the employees' representation (e.g. trade union body or works council) unless there is an effective judgement of the court that reverses the refusal of that body to give consent;
- A failure on the part of the employer to notify the employee in writing on the intended redundancy;
- A failure of the employer to terminate the relationship in a period of one month after the date of expiration of the term of notice of the employee. This term is extended for the period of illness or leave of the employee concerned or for the period of legal proceedings if the refusal of a

competent body to give consent to the dismissal of an employee is disputed in court.

Procedural irregularities of another kind of failure that are considered as not having substantial influence on the lawfulness of the dismissal are as follows:

- A failure to respect the term of notice, if the notice is given in writing. If the employer terminates the employment relationship before the period of the given notice expires, the date of dismissal shall be shifted to the date when the term of notice should have expired and the employee shall be paid for this period the salary which the employee would have received during the period of notice;
- An obligation to give notice to the employee with his signature was not observed, but the notification was performed in writing. However, this requirement is relatively new and there is no clearly defined practice on the influence of the breach of this obligation on the lawfulness of the dismissal;
- A failure to identify a statutory ground (i.e. Article 129 Labour Code) in the documents of dismissal including the notification or the filling of the contract of employment;
- The notification of the employee on the dismissal contained wrongful information;
- The settlement of accounts was not executed or not executed in accordance with statutory provisions. The simple fact those compensations or other sums due were not paid within the time limits or a failure of an employer to respect other required rights or the rights currently being acquired do not have effect on the lawfulness or enforceability of the dismissal.

It remains unclear whether the failure of the employer to inform the employees' representatives and/or consult them on the dismissal on economic, structural, technological or similar grounds could have an effect on the lawfulness or enforceability of the dismissal. There is a noteworthy tendency that the courts treat the breach of the obligation to consult the employees' representatives as a breach only in a bilateral relationship between the employer and the representatives concerned which does not affect the rights and obligations of the parties to the individual contract of employment.

In case of unlawful dismissal the court shall reinstate the employee in his previous job and award him the average wage for the entire period of involuntary idle time from the day of dismissal from work until the day of the execution of the court decision. Alongside with the reinstatement the court shall award the employee the average wage for the entire period of the involuntary idle time from the day of dismissal from work until the day of the execution of the court decision. Before 2003 the court was entitled to decide on the possibility to continue the employment relationship on the request of the employee based on his personal impression that after the reinstatement he will be provided with conditions not favourable for work. Usually courts satisfied all these requests of employees. The court today may choose between the termination of the employment relationship and compensation instead of the reinstatement upon a request of the employee, the employer or its own initiative. If the court finds that the redundant employee may not be reinstated in his previous job due to economic, technological, organisational or similar reasons, or because he may be provided with conditions not favourable for work, it will pass a decision to recognise the termination of the employment contract as unlawful (in this case the employment contract shall be considered as terminated from the effective date of the court decision) and will order to award him:

- The average wage for the period of involuntary idle time from the day of dismissal from work until the effective date of the court decision; and
- A severance pay in the amount determined by the length of service of the employee concerned (under 12 months—one monthly average wage, from 12 to 36 months—two monthly average wages, from 36 to 60 months—three monthly average wages, from 60 to 120 months—four monthly average wages, from 120 to 240 months—five monthly average wages, over 240 months—six monthly average monthly wages). The severance payment shall be paid by the employer in the same manner as any other sum established by the effective decision of the court. If the dismissed employee has already received the severance pay according to the statutory requirements (see below), the average wage for the period of involuntary idle time shall be reduced by the sum equal to the received severance pay. The statutory conditions on granting the compensation and determining its amount are mandatory and the court must follow them. It differs from the situation before 2003 when the



court was entitled to decide freely on the amount of compensation for the employee—up to 12 monthly average wages.

The compensation of the non-material damages of the employee is also possible but in practice almost not awarded.

### **7) Collective agreements and practice**

The law regulates the subject in a strictly imperative manner, and there is almost no room left for social partners to agree on substantial or procedural questions of dismissal. The only exceptions are the possibilities to provide in collective agreements for longer notice periods, more generous severance payments or to specify further groups of employees who are entitled to the right of priority to retain the job in case of redundancy or whose dismissal is subject to a prior consent of the appropriate body of the employees' representation. The first two options (a notice period and a severance pay) are quite popular in collective agreements at the enterprise level. From the theoretical point of view collective agreements may provide for more favourable provisions which differ from what the law prescribes, in particular setting out the rules of internal procedure, involvement of the employees' representatives etc. However, in practice there are no collective agreements containing rules on substantial or procedural aspects of the termination of an employment contract on disciplinary grounds. This same applies for individual agreements.

### **9) Relationship with other forms of termination**

The rules on compensation for redundancy are the same as for the dismissal on the grounds related to the qualification, professional skills or conduct of an employee, but without any fault on the part of the employee—both kinds of the termination of the employment contract belong to the same group of the grounds for the termination of the employment relationship. In practice, a clear tendency that compensations are usually payable to the employee on the termination of contract by mutual agreement may be observed. If the employer proposes to terminate the contract by bilateral agreement, he is expected to propose compensation not lower than the severance pay as it is required for dismissal on economic and technological grounds. Mutually agreed deviations from statutory severance pays are not significant (usually from one to two monthly average wages).

If the employment contract is terminated otherwise than at the will of the parties but without any fault on the part of an employee, the severance payment is fixed in the law to two monthly average wages. If the employee is dismissed on disciplinary

grounds or otherwise than at the will of the parties but with a fault on his part, there are no severance payments or compensations related to dismissal.

It is interesting to note that if the employee who is notified on the redundancy requests the employer not to wait until the end of the notice period but to terminate the employment relationship earlier, his request is not considered as a proposal to terminate the contract by mutual agreement or as a resignation of the employee. In this case, the employer may, but is not obliged, to terminate the contract of employment for economic grounds prior to the expiry of the period of notice.

### **10) Special Arrangements**

*Transfer of the undertaking.* Article 138 of the Labour Code explicitly prohibits terminating the relationship of employment on the grounds of:

- A merger by forming a new enterprise or a merger by acquisition;
- A division by forming new enterprises or a division by acquisition;
- A transfer of the undertaking or part of the undertaking.

The transfer of the undertaking or part of the undertaking is an explicitly prohibited ground for the termination of the employment contract but there is no provision that would describe the transfer of the undertaking or its part. The legal provision does not regulate the mechanism of the transfer of the employment relationship to the new owner, his subsidiary liability, the right of the employee to resign on his own initiative, a right to information and consultation of the employees' representative, specific legal consequences of the violations of this rule, including administrative or other liability. In practice this causes many problems concerned with the procedure of transfer of employees as well as the enforcement of the right of affected employees. The courts should consider the dismissal unlawful; however, there is a great amount of uncertainty on who should act as a defendant in legal proceedings, under which conditions and by whom the dismissed employee shall be reinstated etc.

*Bankruptcy.* In case the procedure of bankruptcy is started, the law gives numerous possibilities to terminate the contract. According to Article 137 of the Labour Code, upon the commencement of the employer's bankruptcy procedure, employment contracts may be terminated in accordance with the provisions of bankruptcy laws and the provisions of the Labour Code, which are applicable only when respective issues are not

regulated by bankruptcy laws. The Law on the Bankruptcy of Enterprises<sup>22</sup> provides legal grounds and some procedural requirements for the termination of the contract of employment. Within three days after the decision of the meeting of creditors or an effective ruling of the court about the commencement of the bankruptcy procedure was passed, the administrator of the bankruptcy procedures appointed by court shall dismiss the employees with a 15 days' notice and the severance pay of two monthly average wages. The intended dismissal shall be notified to the territorial office of the State Labour Exchange, the municipal authority and the employees' representatives at the enterprise. A certain number of employees may be asked to continue their work under a fixed-term contract during the bankruptcy procedure. Their number shall be specified by the meeting of creditors or court. The list of such employees shall be compiled by the administrator. There is no clear line in the jurisprudence but there is majority in the literature and practice claims that the administrator is not obliged to take into account any of statutory guarantees, priority rights, an obligation to transfer the employee to another work and other procedural and substantial requirements established by the Labour Code, while compiling the list.

*Fixed-term contracts.* Until 2003 Lithuanian labour law allowed the employer to terminate the contract of employment concluded for an indefinite period of time as well as for a definite period in the same manner. After the Labour Code 2002 came into effect, the regulation of the termination of fixed-term contracts due to economic, structural and technological reasons became less convenient for the employee if the dismissal is executed prior to the date of expiry. Pursuant to the provisions of the Article 129 (5), an employer may terminate a fixed-term employment contract before the expiry thereof only:

- Under extraordinary circumstances (e.g. because changes in the performance of the employee's functions are not needed, the employee is on a long period of idle time and there is no possibility to transfer him to another job) and if the employee cannot, with his consent, be transferred to another work<sup>23</sup>, or
- Upon the payment of the average wage to the employee for the remaining period of the employment contract.

Upon the expiry of the fixed-term employment contract, the employer is entitled to terminate the employment contract without any limitations, except the contracts

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<sup>22</sup> State Gazette, 2001, no 31-1010.

<sup>23</sup> The statutory right to priority in retaining the previous job (see 3.3.4 p. 2) is not applicable here.

with pregnant women. The termination does not require the notice period and severance pays.

*Short fixed-term employees.* A short fixed-term employment contract is an employment contract concluded for a period not exceeding two months on the grounds of circumstances of short temporary nature. Alongside with common grounds for termination, short fixed-term employment contracts may be terminated on the initiative of the employer on the grounds that:

- The interruption of work due to production-related reasons lasts for more than 2 weeks or due to the decrease of the scope of work. The employer may dismiss the employee without any notice but with a severance pay in the amount of one monthly average wage;
- The employee is absent from work due to temporary incapacity for work for more than 7 days. The employee shall not be notified on the dismissal but he is entitled to the severance pay in the amount equal to the wage for the rest period of the validity of the contract but for not longer than one month. Employees, who have lost their functional capacity as a result of injury at work or occupational disease, shall retain their work position until they recover their functional capacity or a disability is established but not longer than until the expiration of the short fixed-term contract. Their severance pay is limited to one monthly average wage.

*Seasonal workers.* A seasonal employment contract shall be concluded for the performance of seasonal work, which due to natural and climatic conditions is performed not all year round, but in certain periods (seasons) not exceeding eight months (in a period of twelve successive months), and is entered on the list of types of seasonal work. Alongside with common grounds for termination, short fixed-term employment contracts may be terminated on the initiative of the employer on the grounds that:

- The interruption of work lasts for more than 2 weeks due to production-related reason or to the decrease of the scope of work. The employer may dismiss the employee without notice but with a severance pay of one monthly average wage;
- The employee is absent from work due to temporary incapacity for work for more than 2 weeks. Employees, who have lost their functional capacity as a result of injury at work or an occupational disease, shall

retain their work position until they recover their functional capacity or a disability is established but not longer than until the expiration of the contract of seasonal work. The employer may dismiss the employee without notice but with a severance pay of one monthly average wage.

*Heads of Companies.* Heads of companies shall work under employment contracts. However, by referring to a specific nature of that employment relationship, the Lithuanian Supreme Court developed an approach of very limited applicability of the labour law with regard to the heads of the companies. The court argues mainly that the Law on Companies<sup>24</sup> establishes additional grounds for the termination of contract with the head of the company, in particular, if the general meeting of shareholders decides to revoke the head before the end of the term of his office. In that case the procedural requirements of the Labour Code (notification, priority, possibility to transfer to another position, guarantees for certain groups of employees etc.), will not be applicable except those related to the settlement of accounts and formal aspects of the dismissal.

#### **11) A special case of collective dismissals**

Collective dismissals are regulated by Article 130 (5) – 130 (6) and Decree No 61 of the Minister of Social Security and Labour of 30 May 2000 on the procedure of the dismissal of the group of employees and its prevention<sup>25</sup>. A collective dismissal is defined as a reduction in the number of employees or the termination of the activities of an enterprise if the employer intends to make redundant within 30 calendar days the following categories of employees:

- 1) Ten and more employees where an enterprise employs up to 99 employees;
- 2) Over ten per cent of employees where an enterprise employs 100 to 299 employees;
- 3) 30 and more employees where an enterprise employs 300 and more employees.

The dismissals of employees working under fixed-term employment contracts and seasonal employment contracts upon the expiry of their employment contract are not treated as a collective dismissal. This same applies for the employees resigning on their own initiative, including reasons related to retirement, as well as the dismissal of employees on disciplinary grounds. The prescribed procedures are not applicable for the crews of seagoing vessels.

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<sup>24</sup> State Gazette, 2003, no 123-5574.

<sup>25</sup> State Gazette, 2000, no 48-1398.

The law requires that the employer must, within two months, notify in writing a territorial office of the State Labour Exchange, a municipal institution and representatives of the enterprise's employees (enterprise-level trade union or works council) on an intended collective dismissal. Since the law does not explicitly stipulate, it is widely understood that the notification shall be pursued at least two months before the factual termination of the relationship of employment and not before the communication of the notice to an individual employee. It should be stressed that notification is not related to the notice given to the individual employee.

There are several stages of the procedure:

- Information of the employees' representatives (enterprise-level trade union or a works council) in writing at least 7 days before the notice is submitted to the regional territorial office of the State Labour Exchange and the municipal institution on the grounds of dismissal, number of affected employees and their categories, time schedule of dismissal. If there are no institutionalised employees' representatives at the enterprise, the employer shall inform the employees personally or in the general meeting of employees;
- Consultation with the employees' representatives, assessment of their proposals and communication in writing on the decision taken. The consultation shall be aimed at avoiding or mitigating negative effects of the intended redundancy. The law does not require that the parties should reach a consensus, but neither the option to conclude a collective agreement nor arbitration is proposed;
- Notification of state authorities after having informed the employees or their representatives on intended redundancies. The employer shall forward the filled form of "notice" to the territorial office of the State Labour Exchange and the municipal institution and provide with information on the grounds of dismissal, the number of affected employees and their categories, the time schedule of dismissal.

There is no statutory provision on how the failure of the employer to meet procedural requirements (absence of information, consultation or notification) affects the lawfulness of an individual dismissal. The Decree stipulates only that if the employer violates the time limits for the notification of the territorial office of the State Labour Exchange and the municipal institution, the dismissal shall be postponed to the date when

the term of notice should have expired. It has been already mentioned that there is a tendency that courts consider the breach of the obligation to consult the employees' representatives a violation in the framework of a bilateral relationship of the employer and the representatives concerned. This tendency, if confirmed by the Lithuanian Supreme Court, will raise a question on the absence of effective sanctions for the breach of procedural requirements related to collective redundancies since there are no special criminal or administrative sanctions established. Article 41 (1) of the Administrative Penalties Act which establishes a modest administrative fine of 500 to 5000 LTL for the "breach of labour legislation" is rather general and formally may involve procedural breaches related to redundancy. However, in practice the sanction is not applicable for similar cases of the collective labour law.

### **3.4. RESIGNATION (TERMINATION OF AN INDIVIDUAL CONTRACT OF EMPLOYMENT ON THE INITIATIVE OF THE EMPLOYEE)**

#### **1) Justification**

An employee has a full right to terminate the employment contract unilaterally without providing any reasons for termination. The right may not be affected by the fact that the contract is either a fixed-term contract or an open-ended contract of employment. This unique solution is a consequence of a political decision adopted by the Parliament in the process of promulgating the Labour Code in 2002. The termination of contract at the employee's will is a subject of procedural requirements only: if the employee has expressed his will to terminate the relationship by a written request, the employer has no other option but to terminate the contract. The violation of procedural requirements by the employee usually does not have a substantial impact on the validity of the resignation or on the entitlement of the employer to the compensation of the suffered damages.

The resignation of the employee from his position is not regarded as a tacit resignation. The employer may terminate the contract of employment without any notice on his initiative on the grounds of a gross breach of work duties by the employee, i.e. absence from work throughout the whole day (shift) without any substantial cause.

#### **2) Formal and procedural requirements**

There is a procedure prescribed by the Labour Code for the resignation of the employee which encompasses

- A written notification of the employer by submitting the employee's request to terminate the contract (letter of resignation) within time limits prescribed by law, collective agreements or individual contracts. In that case the employee's request shall be treated as a notice;
- Formalization of the termination of contract, including the settlement of accounts.

Firstly, the law stipulates a possibility to resign during the probation period, which shall be no longer than three months, and in cases specified by laws—no longer than six months. If the probation was set to assess the suitability of work for the employee, he is entitled to terminate the employment contract during the probation period by giving the employer a written request thereof three days in advance.

After the probation period or if the probation was not set, the employee is free to terminate the employment contract on his initiative by submitting a request. He is not obliged to provide the employer with reasons of resignation, but the legislator differentiates between different procedural requirements depending on the reasons provided by the employee:

- "Serious" reasons. If the employee's request to terminate the employment contract is motivated by his illness or disability restricting his proper performance of work, or by other valid reasons established in the collective agreement, or where the employer fails to fulfil his obligations under the employment contract, violates laws or the collective agreement, the employee is entitled to terminate the contract giving his employer a notice thereof at least three days in advance. The same is applicable if the request is submitted by the employee who is entitled to the full old-age pension or is in receipt thereof or if the idle time at the employee's workstation during the working time lasts for over 30 successive days, or if it amounts to over 60 days in the last twelve months, as well as if the employee is not paid his full work pay (monthly wage) for over two successive months;
- Other reasons ("not serious" reasons). If the employee does not provide reasons for the termination of contract or cannot provide any serious reasons for the termination of contract, he shall give his employer a notice thereof at least 14 days in advance;

The notice shall always be in writing.



Different periods of notification may be established by collective agreements as well as individual contracts of employment. The collective agreement may set a period of notice, but it shall not exceed one month. The individual contract may provide for the period of notice which shall be not less favourable to the employee than that prescribed by law and collective agreements, if applicable.

There are additional guarantees provided for employees in order to protect them against possible pressure of the employer to make the employee sign the request against his true will. The employee is entitled to withdraw his request to terminate the employment contract not later than within three days after the submission of the request. Afterwards he may withdraw his request only with the consent of the employer. However, this idea is practically overturned by recent court practice where a possibility of the employee to terminate the contract at an earlier date than the three day period was examined, e.g. on the same day as the request was signed and submitted. The Lithuanian Supreme Court interpreted the situation so that the contract may be terminated at the request of an employee at an earlier date than the specified notice period but only with the consent of the employer. If the earlier date of termination is agreed and does not involve the full period of three days and the contract is terminated, the statutory guarantee providing the right to withdraw the request may not be applicable.

The employer has a duty to formalize the termination of contract, i.e. to make a full settlement of accounts with the employee, must pay the employee all the amounts due, fill in the employee's state social insurance card and the employment contract in accordance with the established procedure, issue a certificate about the work if the employee so desires. If after the expiration of the notice the employer does not formalize the termination and the employee continues to work, the employment contract shall be considered as not terminated. Any later termination based on the previous request of the employee is not possible.

### **3) Effects of resignation**

The employment relationship shall be terminated as a consequence of resignation.

The resignation has no direct effect on the rights already acquired by the employee concerning his pay, compensatory payments or other payments (e.g. compensations related to posting, use of personal tools at work, for unused annual leave etc.) of the employer that are stipulated by law, the collective agreement or individual employment agreement are not affected. This same applies to the entitlements to

unemployment benefits—the employee is entitled to the compensation of unemployment which is paid after 8 days (one month in case of receipt of severance payment for resignation due “serious” reasons) from the registration of the unemployed person in the regional office of the State Labour Exchange. The entitlements already acquired or being acquired under public retirement pension schemes or sickness insurance schemes are not affected. In Lithuania private pension schemes and private sickness insurance schemes hardly exist at all, but there is no legal obstacle to restrict the conferment to those entitlements in respective normative acts providing for such entitlements.

#### **4) Severance payments and other forms of income protection**

The employee is not entitled to severance pays if the resignation is not justified by “serious” reasons. If the resignation is based on the employee’s illness or disability restricting his proper performance of work, or for other valid reasons established in the collective agreement, or where the employer fails to fulfil his obligations under the employment contract, violates laws or the collective agreement or the employee is already entitled to the full old-age pension or is in its receipt, the employee shall be paid a severance pay in the amount of his two monthly average wages, unless otherwise provided by laws or collective agreements. The entitlement to the severance pay is not related to the length of service of the employee.

The severance pays shall be paid when making a full settlement of accounts with the employee being dismissed from work on the day of his dismissal, unless a different procedure for settling accounts is provided by laws or an agreement between the employer and the employee. The non-payment of severance pays or other sums due does not affect the validity of the termination of contract but gives grounds to claim the payment before the court. If the court establishes that the delay was not on the part of employee, it should order the employer to pay the sum due and, in addition, to pay the employee an average pay for the time of delay.

In case of resignation, the employer is allowed to make deductions from the wage to compensate his expenses incurred by him during the last working year in relation to the employee’s training, in-service training, study visits etc. However, this compensation is possible if an explicit provision on the issue is agreed in the contract of employment (Article 95 (4) Labour Code).

The Labour Code allows deducting the paid vacation pay when terminating the contract of employment with the employee before the end of the working year for which he was given his annual leave, to recover from him for the days of the leave for

which he had not worked. This deduction is not allowed where the employee is dismissed from work without any fault on the part of the employee. The resignation is considered by the courts as the termination of the employment contract without any fault on the part of the employee. Thus the deductions of the paid vacation pay are prohibited.

### **5) Remedies**

Reinstatement is only possible when the employment contract has been already terminated. An employee who considers his termination of contract unlawful may bring the action of reinstatement before the court of general jurisdiction (civil court) within 1 month after the termination of the relationship (a general term for the court action in case of terminating the employment relationship). The term of 1 (one) month starts with the reception by the employee of the written document on the termination (the order of the employer, the contract of the employment filled as regards the end of the relationship etc.), unless there is evidence that the employee refused to accept the written documents. The term of 1 (one) month may be extended by court if the action was delayed due to justifiable reasons. Any claim of another nature (e.g. related to unpaid sums etc.) shall be brought before the court within 3 years.

The Code of Civil Procedure establishes special rules with regard to the resolution of individual labour cases. First of all, claimants (employees) are released from the stamp-duty. Alongside with the court of the employer's neighbourhood, the court on the territory where the work is performed, was performed or shall be performed is competent for any labour case. The court may collect evidence on its own initiative, to involve the third party in the procedures, to exceed the demands of claimants or to apply alternative means for the protection of the infringed rights. The case shall be prepared for hearings in 30 days and a decision shall be taken not later than in 30 days after the beginning of the hearings. The complaint does not suspend the effects of the termination of the employment relationship but the Labour Code provides specific rules as regards a speedy execution of the court decisions in labour cases before the decision has taken an effect (in general, 30 days after announcing the decision or after announcing the decision of the court of appeal). In particular, the court *shall* issue an interim relief on the prompt reinstatement (on the next day) of the unlawfully dismissed employee into his previous job and/or on the award of a wage, the parts of it not exceeding the average monthly wage. The court *may*, on the claimant's application or on its own initiative, issue an interim relief to execute without delay of a decision or a part thereof on the formulation of dismissal or in other cases if the execution of the decision becomes not feasible or difficult due to

special circumstances. The rules on interim relief are of mandatory nature in the Labour Code, but the Code of Civil Procedure gives differently to the judge full discretion to issue or not the interim relief prior to the decision of the court taking an effect. However, the courts quite often take the option.

The failure by the employer to execute a decision of the court in labour cases or a failure to execute the decision to change the formulation of dismissal, on the demand of the employee the court shall make a ruling to recover for the employee's benefit the wage for the entire period until the day of its execution.

The former Code of Civil Procedure had an interesting rule on non-recourse in labour cases: if, under the cassation procedure, the decision of the court was repealed, the recourse of sums of money was permitted only in case the repealed decision was based on false evidence given by the plaintiff or forged documents presented by the latter. However, the new Code of Civil Procedure does not maintain such regulation.

According to the well established practice of courts, the burden of proof is always on the employer to demonstrate the existence of grounds for terminating the employment relationship and the correctness of the procedure. However, if the action of the employee is based on a challenge of the validity of his signed request to terminate the contract, the employee has to provide evidence that the request was not voluntary or was written against his will.

There are no administrative or criminal penalties which may be imposed on the employee in this specific case. The employer's illegal actions targeting the protected groups of employees (pregnant women, young persons, disabled persons etc.) may theoretically make grounds for his administrative or even criminal liability (e.g. the termination of the employment contract is based on the fake request of an employee, the pressure on the employee to sign the request to terminate the contract against his true will etc.). The Equal Opportunities Ombudsman is authorised to investigate cases of discrimination based on sex, disability, sexual orientation, ethnic origin, age etc. and impose administrative sanctions on employers for violations of the quality legislation.

## **6) Unlawful resignations**

The court shall recognise the termination of the employment relationship unlawful, if it finds that:

- There was no request made by an employee;
- The request was not in writing or not signed by the employee;

- The request of the employee was obtained against his will and does not reflect his true will.

In the above cases courts may reinstate the employee in his previous job and award him the average wage for the entire period until the day of execution of the court decision. There are specific rules as regards a speedy execution of the court decisions in labour cases before the decision has taken an effect (in general, 30 days after announcing the decision or after announcing the decision of the court of appeal). In particular, the court *shall* issue an interim relief on the prompt reinstatement (on the next day) of the unlawfully dismissed employee into his previous job and/or on the award of a wage, the parts of it not exceeding the average monthly wage. The court *may*, on the claimant's application or on its own initiative, issue an interim relief to execute without delay of a decision or a part thereof on the formulation of dismissal or in other cases if the execution of the decision becomes not feasible or difficult due to special circumstances. The rules on interim relief are of mandatory nature in the Labour Code, but the Code of Civil Procedure gives differently to the judge full discretion to issue or not the interim relief prior to the decision of the court taking an effect. However, the courts quite often take the option.

The failure by the employer to execute a decision of the court in labour cases or a failure to execute the decision to change the formulation of dismissal, on the demand of the employee the court shall make a ruling to recover for the employee's benefit the wage for the entire period until the day of its execution.

The court may also choose the option of termination of the employment relationship instead of the reinstatement at the request of the employee, employer or its own initiative if it finds that the employee may not be reinstated in his previous job due to economic, technological, organisational or similar reasons, or because he may be provided with conditions not favourable for work. In that case it shall pass a decision to recognise the termination of the employment contract as unlawful and order to award him:

- The average wage for the period of involuntary idle time from the day of dismissal from work until the effective date of the court decision; and
- A severance pay in the amount determined by the length of service of the employee concerned (under 12 months—one monthly average wage, from 12 to 36 months—two monthly average wages, from 36 to 60 months—three monthly average wages, from 60 to 120 months—four monthly average wages, from 120 to 240 months—five monthly average wages, over 240 months—six monthly average monthly wages). The

severance pay shall be paid by the employer in the same manner as any other sums due established by the effective decision of the court. If the employee has already received a severance pay, the average wage for the period of involuntary idle time shall be reduced by the sum equal to the received severance pay. The statutory conditions on granting the compensation and determining its amount are mandatory and the court must follow them. It differs from the situation before 2003 when the court was entitled to decide freely on the amount of compensation for the employee—up to 12 monthly average wages.

In case of the unlawful termination of contract, the employee may theoretically claim compensation of non-material damages.

The failure to observe the period of notice does not constitute grounds for the recognition of the resignation unlawful. Because of the lack of the court practice, it remains unclear whether the employer may claim damages from the employees in case of disregarding the notification period by the employee. The employers often use another option—the termination of the employment contract without notice on their own initiative on the grounds of a gross breach of work duties by the employee, i.e. absence from work throughout the whole day (shift) without any substantial cause.

The fact that the severance pay or other sums due (compensation for unused annual leave, salary etc.) were not paid by the employer does not affect the lawfulness of the resignation validity.

The employee's will to terminate the contract of employment is considered as absolute. Generally, the employer can contest neither the request of an employee to terminate the contract of employment nor the validity of resignation. The claim of damages related to the sole fact of the resignation is impossible, except for cases where the employer's claims are related to the violations of other obligations of the employee arising from the legislation, collective agreements or an individual agreement (e.g. wage deduction, if allowed by law, compensation for pecuniary damages, compensation for the expenses of the employee's training, in-service training, study visits etc.).

#### **7) Relationship with other forms of termination**

There is no specific regulation on the “contrived” resignation. As already mentioned, the employee has a right to contest the validity of the termination of contract and the courts will recognise the termination of the relationship of employment unlawful, if it

finds that the request of the employee was obtained against his will and does not reflect his true will.

### **8) Collective agreements**

According to the Labour Code, collective agreements may specify:

- Different notice periods, which shall not exceed one month;
- Additional grounds which shall be deemed as “serious” for resignation;
- Additional cases where severance pays shall be paid;
- More generous severance pays.

However, in practice there are no collective agreements containing rules on substantial or procedural aspects of the termination of an employment contract on the grounds of the employee resignation.

### **9) Special Arrangements**

*Fixed-term contracts.* Until 2003 the right of an employee to resign on his own initiative prior to the contract expiry was restricted. The employee was entitled to terminate the contract at his request based on serious reasons (illness or disability, violations by the employer of the employment contract, legislation or the collective agreement) only. After the interference of the legislator today there is practically no difference between open-ended contracts of employment and fixed-term contracts as regards resignation: the employee is practically not bound by the term of the contract (!).

*Short-term fixed contract.* Alongside with the common grounds for designation, the employee is entitled to terminate short fixed-term contracts prior to the expiry of the term (up to two months) with a 5 days notice but without severance pays.

*Seasonal workers.* Seasonal workers are entitled to terminate the seasonal contract of employment before the term of the contract expires with a 5 days notice and without severance pays.

*Heads of Companies.* It remains not quite clear whether heads of the companies may enjoy the same status as other employees taking into account a very special nature of their employment relationship, which has been regularly emphasised by the Lithuanian Supreme Court. It is presumptive that the courts will not accept the right of the heads of companies to resign at their free will without any substantial causes, in particular where the statutes of the companies or individual contracts of employment will provide the limitation thereof.

#### **4. GENERAL QUESTIONS RELATING TO ALL FORMS OF THE TERMINATION OF THE EMPLOYMENT RELATIONSHIP**

##### **1) Non-Competition agreements**

There are no valid stipulations for non-competition agreements. Until 2001 such kind of agreements was allowed by special norms of the Law on Trade of 12 January 1995<sup>26</sup> targeting the employees directly working in the sphere of trade. They allowed concluding a “separate” agreement in writing of non-competition with the previous employer for the period of maximum one year after the termination of the employment contract provided the non-competition does not infringe the interest of the employee to unreasonable extent, and the employee receives financial compensation.

Today agreements on non-competition shall be considered as agreements establishing the so called “additional” conditions of the employment contract. These conditions are subject to the provision of Article 94 (2) of the Labour Code: the parties may not establish working conditions, which are less favourable to the employee than those provided by this Code, laws, other regulatory acts and the collective agreement. Agreements restricting the freedom of employment may be considered as contrary to the principle of freedom of employment and establishment consolidated in Article 48 (1) of the Constitution of the Republic of Lithuania. Any proposals to introduce this kind of agreements in the Labour Code have failed in the Parliament several times.

However, during the last few years the non-competition agreements are becoming more and more popular in practice. They mainly stipulate the compensation of the employer’s damages, but not the prohibition of any further employment. The Supreme Court of Lithuania did not express his clear attitude towards those agreements yet. Meanwhile the employers have found another way to protect their interests by relying on the provisions of the Civil Code and, in particular, of the Law on Competition<sup>27</sup>, which prohibit the disclosure of confidential information and unfair competition, in terms of seduction of the employees of the competitor. In both cases employers are entitled to the compensation of damages, and the fundamental rules of the Labour Code on the restricted pecuniary responsibility of the employee are not applicable.

##### **2) Agreements to the effect that the employee will not terminate the contract during a certain period**

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<sup>26</sup> State Gazette, 1995, no 10-204.

<sup>27</sup> State Gazette, 1999, no 30-856.



Agreements to the effect that the employee will not terminate the contract during a certain period shall be considered void on the grounds that they establish working conditions, which are less favourable to the employee than those provided by the Code, laws, other regulatory acts and the collective agreement.

### **3) Issuing a reference**

The employer is obliged to issue a certificate on request of the employee during the procedure of settling accounts with the employee being dismissed. The certificate shall indicate functions (duties) of the employee, the dates of the commencement and end of work, and, upon the request of the employee, the amount of his wage and performance assessment (characteristics). There is no stipulation on the provision of the true information or the principle that the information provided in the certificate shall not impede future job prospects.

### **4) Legal force of the phrase “received in full and final settlement”**

An employer must make a full settlement of accounts with the employee being dismissed from work on the day of his dismissal, unless a different procedure for settling accounts is provided by laws or an agreement between the employer and the employee. The fact of full settlement does not mean that the employee has relinquished his rights; it means that the employee has received the payments mentioned. Declarations that the employee has no further claims arising out of the employment contract are not practised in Lithuania.

## **SUMMARY**

The termination of employment contracts in Lithuania is regulated by the rules of the Labour Code. The law regulates the issue in great detail and in a strictly imperative way; therefore, there is no much room left for social partners or the parties to individual employment contract to intervene or supplement the statutory regulations.

The legal environment surrounding the termination of the employment relationship may be described as sufficiently uniform. There are not so many types of contracts of employment and even fewer types of contracts which deserve special rules, for instance, fixed-term contracts. In general, the law does not differentiate between ordinary rules for certain categories of employers and for certain categories of employees. However, the law provides special protection for certain groups of employees, like pregnant, sick

employees, the disabled, employees raising children, persons under 18 years of age, employees, who will be entitled to the full-age pension in not more than 5 years and employee representatives. Some of those guarantees are of prohibitive nature, but most of them are related to procedural requirements of dismissal.

Apart from the termination of contract without the will of the parties on the grounds provided by the law, the Labour Code specifies a few different ways to terminate the employment relationship. They are related to the single will of both parties (termination by mutual agreement) or to a unilateral will of one of the parties to the employment contract. After having had for a long time the exhaustive list of grounds for the termination of the employment contract on the initiative of the employer, the Lithuanian labour law now follows another pattern. The employer is entitled to dismiss the employee without any fault on the part of the employee for significant reasons. The law does not provide the list of such reasons but indicates that only economic, technological reasons or restructuring of the workplace as well as other similar reasons shall be recognised as significant. The redundancy is legitimate if the employee cannot be transferred, with his consent, to another position within the enterprise. There is a general length of the term of notice of 2 months whilst protected groups of employees shall be notified 4 months in advance. In addition, the employee shall receive the severance payment the amount of which depends on the length of service and makes up from 1 to 6 average monthly wages.

The dismissal on disciplinary grounds is allowed where the employee commits a qualified breach of labour discipline (i.e. a gross breach of work duties) or a repeated breach of the labour discipline or work duties during the period of the last 12 months. The law requires no notice period or a severance payment but prescribes a detailed procedure for internal investigation of the breach on the part of the employee.

The law entitles employees to an absolute right to resign from work, provided the prescribed period of notice (usually 14 days) was observed. The employer is not allowed to challenge the request of the employee to terminate the contract. If the request of the employee to resign was based on the grounds related to his health conditions, the entitlement to an old-age pension or a fault of the employer, the employee is entitled to notify the employer at least 3 days in advance and will receive the severance payment of 2 average monthly wages.

The regulation of termination of the fixed-term contract of employment is a specific Lithuanian feature. The expiry of the term of the fixed-term contract does not mean an automatic dissolution of the relationship but only gives each party grounds to

initiate the termination of the contract. Another national peculiarity pertains to the possibility of the employee to freely terminate a fixed-term contract with a notice prior to its expiration whereas the termination of the contract by the employer is allowed in extraordinary circumstances or requiring the payment of an average wage for the remaining period of the fixed-term employment contract.

As a general rule, the termination of the employment contract has no effect on the acquired rights or the rights currently being acquired as well as to entitlements to social benefits, such as unemployment benefits or entitlements under pension or sickness insurance schemes.

The employee's representatives shall be involved in the process of dismissal on economic grounds but their participation is limited exclusively to information and consultation procedures. A major problem here lies in the absence of any practical significance of such consultations since neither the employer nor the employee's representatives are able to deal with the negative effects of intended redundancy in a constructive way. In addition, the law does not provide an effective sanction for the violation of the right to be informed and consulted. This same applies to collective redundancies which are stipulated in a formal way.

There is a uniform procedure governing the resolution of disputes arising out of the termination of the employment relationship. The employee may bring the action before the court of general jurisdiction within one month from the termination of the contract and the day of receipt of the appropriate notice. The law provides a number of special rules aimed at facilitating the procedure for the employee to protect his infringed labour rights, including the proactive role of the judge to collect evidence, to exceed the demands of the employee or to apply alternative means for protection. The burden of proof is always on the employer to demonstrate the existence of grounds for terminating the employment relationship and the correctness of the procedure of dismissal. If the court establishes that the employee is dismissed without a valid reason or in violation of essential procedural requirements, he reinstates him into his previous job. The Lithuanian law also provides an option of statutory fixed compensation for unlawful dismissal instead of reinstatement.