dr. Barbara Kresal

Termination of Employment Relationships: The Legal Situation in Slovenia

Ljubljana, April 2006

SUMMARY

Few years ago, in 2002, Slovenia introduced new labour legislation and within it new regulation of the termination of employment. It is a result of a long and sometimes very conflicting *social dialogue* between employers' organisations, trade unions and the State. At the end of this process, social partners have reached an agreement (compromise) on all open questions, sometimes also contrary to the proposals, prepared by the experts. In the process of preparing the new Employment Relationships Act (ERA), the labour law and industrial relations *experts* were invited to prepare studies and to give their opinion and proposals in relation to the issues to be included in the law. *ILO* was consulted during this process and the Proposal of the ERA was checked by their experts, too.

Slovenia is bound by the ILO Conventions *No. 158* and No. 135, also Nos. 111, 156, 103, etc., but not by the ILO Conventions No. 145 and No. 151. Slovenia ratified the Revised European Social Charter and is bound by all its provisions which are relevant to the issue of termination of employment (Articles 1, *24, 29*, 4/4, 8/2, 20, etc.). All *aquis communitaire*, including the EC Directive on collective redundancies and the others, is binding upon Slovenia, too. All these international norms, which are binding upon Slovenia, influenced the preparatory work on the new law.

The ERA is a modern codification of individual labour law. Its rules on termination of employment relationships are, in general, in line with the above mentioned international norms in this field and comparable to solutions in other European countries (there are, of course, major differences between the countries in regulation of particular questions in relation to the termination of employment).

The ERA regulates different modes of termination of employment, but the majority of its provisions are dedicated to ***a dismissal***. The employer's free will is limited when dismissing an employee. The employer may dismiss an employee only if there is *a valid reason* justifying a dismissal. The law distinguishes between three types of such reason: *reason of misconduct, reason of incapacity, economic (business) reasons*. Besides defining the valid reason by a general clause, *certain grounds are explicitly prohibited by law* (for example trade-union membership or activity, pregnancy, absence for parental leave, race, colour, sex, age, religion, social origin, etc.). There are *time limits*, too, after which a dismissal would no longer be justified.

In the case of a dismissal for reason of incapacity or for economic reasons the employer has to check *whether there are alternatives to a dismissal* – whether it is possible to find another work/job for the employee within the company or to retrain and/or to employ him or her under different circumstances and if such possibilities exist, the employer, who wishes to dismiss an employee, has to offer a new (changed) contract to the employee. In the case of a dismissal for reason of misconduct the employer has to warn the employee firstly and only if the violations repeat, the employer may dismiss him or her. The *'ultima ratio' rule* is expressed in a general clause, too, saying that an employer may dismiss an employee *only if it is impossible to continue the relationship between the employer and the employee*.

The employer has to fulfil different *procedural requirements*, depending on the type of the reason of dismissal: for example, prior to a dismissal, the employer has to warn the employee, give him or her an opportunity to defend him or herself, the trade-union has to be informed,

the letter of dismissal has to be in writing, stating the reason for the dismissal and explaining it, and it has to be delivered to the employee personally.

The employer has to respect a *period of notice*, depending on the reason for dismissal and on the length of employee's service with the employer (minimum periods of notice provided for by the ERA range between 30 to 150 days). A dismissed employee has the right to *a severance payment* (yet, not in the case of a dismissal for reason of misconduct), which amounts from 1/5 or ¼ or 1/3 of monthly wage for each year of service to a maximum of 10 monthly wages according to law, whereas branch collective agreements and individual contracts of employment may provide for higher amounts.

There are additional special rules for *collective dismissals* (information and consultation with trade-unions and employee's representatives, information to the Employment Service, social plan, criteria for determining redundant employees, etc.). Some special provisions apply in the case of *insolvency* of the employer and in the case of *cessation* of the employer (for example shorter periods of notice), but in general, rules on economic dismissals must be followed. In the case of *transfer* the employees are protected against dismissal, all employment relationships are transferred to the transferee.

The law provides for *a special legal protection against dismissal for certain categories of workers* (employees' representatives, older workers, pregnant women and workers with family responsibilities, workers with disabilities and workers absent due to illness or injury).

Besides an 'ordinary' dismissal (with notice period) the law also regulates *a summary dismissal*: the employer may dismiss an employee immediately, without any period of notice, if there is one of the grounds explicitly laid down by the law, mainly connected with grave misconduct of an employee. In this case a dismissed employee does not have the right to a period of notice nor to a severance payment.

Resignation: The employee is free to resign at any time, he or she just has to respect the period of notice (from 30 to 150 days). In certain exceptional cases, if there is a serious ground, explicitly laid down by the law (mainly connected with grave violations of employer's obligations), *a summary resignation* without a period of notice is possible. In this case the employee has the right to a severance payment and compensation due to the loss of a period of notice.

Other ways of terminating *an employment contract* are: by mutual agreement, death of an employee, death of an employer-natural person, by operation of law (expiry of the work permit for migrant workers; permanent disability for work), by a court judgement.

A former employee has the right to ***an unemployment benefit*** in accordance with the law which regulates unemployment insurance, only if employment relationship was terminated against his or her will or at his or her fault. That means that an employee has the right to an unemployment benefit in the case of a dismissal for economic reasons or for reason of incapacity, but not in the case of dismissal for reason of misconduct, nor in the case of a summary dismissal by the employer (for grave misconduct of an employee). In the case of a summary resignation by the employee, he or she is entitled to an unemployment benefit.

If an employee thinks that he was unlawfully dismissed or his or her rights in connection with termination of employment were violated, she or he has the right to ***a judicial remedy***. He or

she may *bring an action before the labour court within 30 days* as from the delivery of the dismissal or termination of employment. Under prescribed conditions there is possibility to *suspend the effect of the dismissal* until the end of the legal proceedings, but in practice it is rare. If the lawsuit is successful, the court orders *a reintegration* of the employee and payment of salary for the entire period of time from the illegal and thus ineffective dismissal forward; many collective agreements provide for compensation due to illegal dismissal. If the continuation of relationship between the employer and the employee is not possible, the court may (at the employee's request or without it) decide that by its judgement an employment relationship has terminated; in this case the court determines the date of termination of employment, as well. The burden of proof in disputes over dismissals rests on the employer; he or she has to prove that the dismissal was justified.

The regulation on termination of employment in the ERA *applies to all types of employment contracts*, including fixed-term and fixed-task contract (which terminates by the expiry of the period for which it was concluded, but all other modes of termination of employment relationship, including an 'ordinary' dismissal, are possible), home work, temporary work, part-time work. There are no special provisions in Slovenian labour legislation regulating work on call or intermittent work or solidarity contracts. *Labour legislation does not cover economically dependent workers*. There are also no proposals to include this type of work within the framework of labour legislation at the time.

TABLE OF CONTENTS

1. Development of the legal regulation of the termination of employment relationships in Slovenia and its main trends

1.1. From freedom of contract to the protection of employment

From the beginnings of labour law in Slovenia, somewhere in the middle of 19th century, until today the major changes have occurred in the legal regulation of the termination of employment relationships. At the beginning employment relationship was governed by the rule of the freedom of contract. Gradually more and more legal rules limited the employer's absolute freedom when dismissing his workers. Labour legislation gradually guaranteed workers a certain degree of protection of employment and provided for more and more rights in relation to the termination of employment.

Termination of employment relationships has remained one of the central issues of the labour law until today. Special attention is given especially to the termination of employment at the initiative of the employer, against the will of the employee. In such a case there is an evident need for special legal protection of a dependant and economically weaker contractual party, the worker. As a rule, loss of employment means loss of the single or main income source for the employee and his or her family.

Two ways of resolving the problem were introduced, supplementing each other. One is the unemployment insurance, the aim of which is to guarantee an income and an adequate level of social security during the periods when the worker does not receive a salary, and to enable him or her reemployment and thus allow the worker to earn the means for living again. But firstly, the social aspect has been gaining importance when defining the conditions for termination of employment relationship. Legal rules were introduced, the aim of which is either to prevent or at least to appease the consequences of loss of employment, whereby the freedom of the employer when dismissing a worker is being limited in favour of higher level of *protection of employment*. However, legislation also has to consider justified interests of the employers as well as the needs of the respective company and of the work process for an adequate *flexibility*.

Thus, the issue of termination of employment relationship is a matter of conflicting interests. Legal regulation has to provide *equilibrium* between the need for protection of employment and the need for flexibility, according to the given circumstances and the desired outcome. Adequate level of workers' protection in relation to termination of employment presents a sensitive legal, political as well as economic issue. It is also a question of ethics, the level of protection being also a result of a particular cultural development of the society.

The knowledge on the development of legal regulation concerning termination of employment relationships in the past makes it easier to understand and evaluate the present legal regulation and the envisaged changes to it.

1.2. Development until 1918

Until the mid 1800's the legal basis for employment was the service contract, regulated by the ***Civil Code*** (*Obči državljanski zakonik)* from 1811. The only type of this contract was a fixed-term or fixed-task contract which expired after the agreed period of time or after the completion of the task respectively. The service contract also expired in case of death of the worker but not so in case of employer's death. That regulation did not distinguish between the

contract for dependant work (i.e. contract of employment) and the contract for independent work**,** which shows that in those times the need for special protection of workers was not yet recognised.

Trading regulations (*Obrtni red*) ***from 1859***, which represented the basic code for establishing the new capitalist system based on free enterprise and market economy, also included a special chapter, which regulated the legal position of the workers as well. According to it, the workers were given contracts for indefinite period of time as a rule; yet, at that time a contract for indefinite period of time meant weaker legal position for the worker than a fixed-term contract, since the employer could dismiss him or her at any time with a rather short period of notice or in certain cases also without any period of notice. In 1883 and in 1885 the first and the second amendment were adopted, which included numerous protective provisions in favour of employees. This is now considered to be the beginning of labour legislation in Slovenia. However, this legislation was only applicable to the workers who carried out 'unskilled work', predominately factory workers. At that time the term 'worker' had a much narrower meaning than today.

Trading regulations of 1859 restricted neither the employer nor the employee about termination of employment. Each party was allowed to terminate the contract at any time, the only restriction being the period of notice, which was the same for both parties, namely 14 days in case there was no other agreement. The same period of notice applied also in case of bankruptcy. Exceptionally, the premature termination of the contract on serious grounds specified by the law was possible (i.e. a summary dismissal/resignation). A summary dismissal by the employer was possible, for instance, if the worker drank, committed a criminal offence, carried out additional work without permission of the employer, ceased working without a justified reason or encouraged other workers to insubordination (which at that time also meant strike), etc. A summary resignation by the employee was possible, for instance, if the work evidently damaged his or her health, if the employer treated him or her badly and violently, in case of non-payment for the work done, etc. In such a case the worker was entitled to a compensation for the lost income during the period of notice.

From today's perspective the sanctions for violations of employment contract seem to be infinitely more difficult for the worker than for the employer:

- If the employer ignored the period of notice, he or she had to pay a compensation for the loss of income.
- For the same violation, the worker was not just liable for damages. Additionally, the violation of the contract was considered as an offence and a fine could be imposed on the employee in the approximate amount of one third of the daily wage. Apart from that, the employer had a right to demand that the worker returns to work for the remaining period of notice.
- If an employer hired the worker although he or she knew, that the previous employment contract was not terminated in accordance with the law, this was also considered as an offence which was sanctioned by a fine.

Trading regulations also regulated other ways of terminating employment contract. Employment contract was terminated upon death of the worker, whereas in case of employer's death it was transferred to the successors. In case of bankruptcy the employment contract did not ceased automatically. Cessation of the business caused the termination of employment, but the worker was entitled to a compensation for the lost period of notice.

In 1916, an amendment to the Civil Code came into force which introduced a distinction between the service contract for dependent work (i.e. employment contract) and the work contract (independent work). For that time the new legislation reached a relatively progressive level of workers' protection. A fixed-term contract expired by the agreed period of time, whereby neither of the parties could terminate it prior to it except on serious grounds. If fixed-term contract was concluded for more than 5 years, the worker (but not so the employer) could terminate it after 5 years, the period of notice being 6 months. It was possible for any of the contractual parties to terminate employment contract for indefinite period of time, whereby the period of notice had to be obliged.

The period of notice was the same for both parties: 14 days, and for jobs in higher positions at least four weeks. The worker was entitled to paid (!) absence from work during the period of notice for the purpose of looking for another job. In case of insolvency the period of notice had to be observed. The employment contract was terminated by the death of the worker and in case of the cessation of the business. A summary dismissal for serious reason was regulated only by the general clause and no detailed grounds were specified.

The employer had a right to demand from the worker not observing the period of notice to return to work and to pay for the damages. The worker was also bound to pay damages in case he was dismissed due to grave misconduct. In case the employer breached the period of notice or employment contract for definite period of time, the employee was entitled to wages for the entire period of notice or for the duration of the employment contract respectively (the amount was reduced for the sum the worker earned or could have earned elsewhere or for what he or she saved).

Complaints related to termination of employment could be filed within the period of six months.

1.3. Development between the two World Wars

After World War I labour legislation was being further developed within Yugoslavia. Two acts adopted ***in 1922*** (***Protection of Workers Act***, *Zakon o zaščiti delavcev*) and ***in 1931*** (***Trading Act***, *Zakon o obrtih*) were of particular importance. The term 'worker' was widened: labour legislation did not cover just blue-collar workers, but also white-collar workers.

The law distinguished between the following:

- Fixed-term employment contract. It expired after the agreed time. Prior to it, an employee could only be dismissed on serious grounds.
- Contract for life or for a period of more than 5 years. The employer could dismiss an employee, except on serious grounds. An employee however could resign after five years freely, whereby the period of notice was set to 6 months.
- Contract for indefinite period of time. If was predominately type of employment contract for blue-collar worker in practice. Both parties could terminate it at any time, whereby the period of notice had to be observed.
- Employment contract ‘on probation’. Each of the parties could terminate the contract within the trial period (maximum of one month) without any period of notice.

The period of notice was set to 14 days. For white-collar workers the minimum period of notice was 6 weeks; it was prolonged in relation to the length of employment (after five years of employment to 3 months, after fifteen years to 4 months and after twenty years to 5

months). White-collar workers were also entitled to 8 hours of paid absence from work a week during period of notice for the purpose of looking for another job. The rules on a summary dismissal remained unchanged, yet the serious grounds justifying it were specified in more detail and time limits (a week after the employer learned about the reason) were set, after which a dismissal was no longer justified.

A new right was introduced – a severance payment. Only the white-collar workers with at least 10 years of service with the employer were entitled to it. The minimum amount of a severance payment was set to 4 month salaries, whereby it was increased in relation to the length of employment (up to 12 salaries for 25 years of employment). The worker was not entitled to a severance payment if he or she resigned or was dismissed for serious misconduct. The worker was not entitled to a severance payment if he or she met the criteria for retirement.

For the first time the law also regulated a non-competition clause and certain restrictions to it were introduced.

For the first time the law also explicitly prohibited a dismissal in certain cases. For example, in case of temporary absence from work due to illness of a worker – up to one week, if the worker was employed for at least 14 days. Or, the employer was not allowed to dismiss the female worker six weeks prior and 6 weeks after childbirth. Trade-union representative also enjoyed a special protection.

1.4. Development after World War II until 1991

The period after World War II was characterised by major changes regarding regulations on employment relationships and their termination. Immediately after the war the previous concepts remained valid. A ***decree from 1946*** regulated the following:

- 14 day period of notice for workers (a longer one for white-collar workers);
- the trial period was limited to 14 days for blue-collar workers and one month for white-collar workers;
- a paid absence from work (8 hours a week) during the period of notice for the purpose of looking for another job;
- a severance payment for white-collar workers (one monthly salary for 3 to 6 year length of service, for longer one four monthly salaries).

The regulations on termination of employment dating from ***1948*** improved the protection of workers and unified the conditions for all workers. The ways for terminating the employment contract were: - in case of a fixed-term contract the expiry of the agreed period of time or completion of work; - in case of an open-ended contract a dismissal/resignation (with period of notice); - a summary dismissal/resignation; - by operation of law; - by an order for replacement of the worker, issued by a minister; - by a disciplinary decision; - by death of the worker, - by mutual agreement.

A new and a very important legal provision was that the employer had to justify a dismissal by giving the reasons for a dismissal. Every dismissal had to have an explanation. The final decision on termination of employment was in the hands of a special committee within the company to which the dismissed worker could appeal.

After 1950 the system of self-management and social ownership was gradually introduced. A different nature of employment relationship called for a different regulation of termination of employment. The *Employment Relationships Act from 1957* strongly improved the position of workers regarding the termination of employment. It introduced a number of procedural requirements**,** such as written form for a dismissal and for a mutual agreement. Procedure prior to a dismissal was foreseen. Every worker had a right to appeal. In case of disciplinary dismissal even more demanding disciplinary proceedings was to be carried out. A detailed explanation in writing had to be given for every dismissal. A dismissal is explicitly prohibited in certain cases: - illness; - pregnancy and childbirth; - within the period of 8 months after the childbirth; - during the time of professional training or specialisation; - during a disciplinary proceeding, etc. Minimum periods of notice are prescribed by the law which could be either shortened or prolonged by the contract (minimum being 14 days and the maximum 6 months). Severance payment was guaranteed in the amount of four month salaries for all the workers concerned. In addition, 12 hour paid absence from work during period of notice a week for the purpose of looking for a new job. For the first time the law also included special provisions on collective dismissals for economic reasons.

According to the *labour legislation from 1965*, the organisation could not terminate the employment contract without the consent of the worker concerned, except in very specific cases laid down by the law. The security of employment has been strengthened even more. Legal regulation was based on ***the 1963 Constitution***, which explicitly declared also *the right to work*. The process of transformation of the nature of employment relationships was concluded by ***the mid-seventies*** of the previous century, with the *Constitution from 1974*, *the Associated Labour Act* adopted in 1974 and *the Employment Relationships Act* from 1977. The focus was on the right to work and a very high level of employment security. The worker was to be guaranteed an employment even in case of redundancies or economic problems of the company and in case of incompetence of the worker.

The increased protection of workers regarding termination of employment was not only a consequence of the specific self-management socialist system, since after World War II there was a development in the direction of stronger protection of employment in other countries as well. In 1963 The International Labour Organisation adopted the ILO recommendation No. 119 on termination of employment relationship and ***in 1982 the ILO Convention No. 158*** on termination of employment relationship at the initiative of the employer which clearly specified that there had to be a valid reason for any dismissal, that certain procedural requirements had to be fulfilled and that an employee had to have certain rights when dismissed. The convention was also ratified by the former Yugoslavia. However, our legal regulations at that time provided for a much higher level of employment protection than in the other countries, and that was not only a result of the general development of labour law after World War II, but also of a specific socio-political system.

In the 1980's the process described above started to take a different direction, back towards the contractual concept of employment relationship, towards a system based on private property and market economy. There was a demand for more flexibility in the field of labour relations. Labour legislation adopted ***in 1989-90*** (*Basic Rights from Employment Relationships Act from 1989* and *Employment Relationships Act from 1990*) still retained a relatively high level of protection of employment, the main rule being that termination of employment against the will of the employee was only possible in certain cases, explicitly specified by the law. However, the stability of employment was somehow shattered due to the rules, which introduced again the possibility of dismissals for economic reasons (redundant

workers). The changed economic legislation also loosened the conditions for opening a bankruptcy; apart from redundancies due to economic reasons, the *ex lege* termination of employment relationship in case of bankruptcy or compulsory composition became one of the most frequent ways of terminating employment.

1.5. Development within the Republic of Slovenia after 1991

The changes in the legal regulations concerning termination of employment relationships in 1989-90 had an immediate effect on the state of employment and unemployment. The unemployment rate started to grow very fast; in 1988 only about 20.000 people (about 2%) were unemployed, in 1990 the number grew to 44.600, in 1991 to 75.000 (8,2%); in 1992 it exceeded 100.000 for the first time, only to reach culmination *in 1993 with about 137.000 (15,4%) unemployed people*. Afterwards the number of the unemployed settled at around 120.000 – 130.000; *since 1998 it has been gradually falling again*, to reach the present status of around 90.000 (10%). The above data refer to the officially registered unemployed. The survey unemployment rate (measured according to the methodology of the ILO and Statistical Office of the EU) which has been measured in Slovenia since 1993 is much lower (*at present around 6%*).[1]

It seems interesting that legislation on individual labour relations, including regulation concerning termination of employment, remained unchanged for more than a decade, although the newly founded state Slovenia overhauled its legislation in all areas of law. It was not until 2002 that a new (now valid) Employment Relationships Act was adopted.

Through the entire 1990s legislation from 1989-90 was relevant for termination of employment relationships, the only major change being an amendment from 1991 concerning redundancies due to economic reasons. The legislation distinguished between three types of termination of employment relationship: - with the consent of the worker, - without the consent of the worker and - by operation of law (regardless of the will of either the employer or of the employee).

Employment relationship could be terminated with the consent of the worker on the grounds of a written statement by the worker or written mutual agreement. The period of notice ranged between one to six months; but was shortened by the collective agreement to not more than three months. The employee was neither entitled to severance payment nor to unemployment benefit.

Employment relationship could only be terminated without the consent of the worker in very specific cases which were clearly specified in the law, one of those being redundancy. Apart from that, numerous formal and procedural requirements had to be met. The employer had to issue a written letter of termination of employment in which he was obliged to state the reasons for termination and hand it over to the worker concerned; it had to include also instruction about the right to appeal and the right to legal protection, as well as information about unemployment insurance rights. In addition to that a rather demanding preliminary procedure was prescribed, which varied in relation to the reason for the termination of employment. The period of notice depended on the reason for dismissal; in case of dismissal for economic reasons it was set to six months. The redundant workers were entitled to severance payment as well. There were special provisions for collective redundancies due to

[1] The data on unemployment rates are quoted from the Annual reports of the Employment Service of Slovenia.

economic reasons (the role of trade unions and of the employment service; social plans; criteria for determining the redundant workers; special protection for certain categories of workers, i.e. workers with disabilities, the elderly, workers on parental leave, etc.).

Ex lege, the employment relationship was terminated after the set period of time for which the employment contract was concluded (in case of fixed-term contract); further, if the worker was found to be unfit or forbidden to carry out the work, if he was absent from work due to prison service exceeding six months, and if the worker met the criteria for retirement (if an employer agreed the employment could continue) and in case of bankruptcy.

As already pointed out, *legal regulation on termination of employment relationships from 1989-90 remained unchanged during the entire transition period until 2002*. Theoretically (on the paper) an employee enjoyed a high level of protection; the possibilities for termination of employment relationship were very limited. However, the regulation did not follow the changed nature of the employment relationship. In principle the employee did enjoy rights and a relatively secure legal status, yet the legislation did not provide an effective protection in case the employer violated the regulations in concrete cases. Due to high level of protection regarding termination of employment relationship there was a strong increase of contract work for which the protective measures of the labour law did not apply and also an increase of fixed-term employment contracts, there was a lot of illicit work, whereby the labour inspection and the labour courts could only respond very slowly because of the vast amount of work. Numerous employees lost their jobs due to bankruptcy or compulsory composition of their employers, whereby they were not entitled to any of the rights and formal guaranties which other redundant workers were entitled to according to the general labour legislation. The employers thus achieved flexibility within the labour market by making use of other modes of employment and other measures, provided for in labour law (above all of fixed-term contracts which still represent about 70% of all new employments; further of outsourcing, student work, contract work, etc.), but also of illegal practice (i.e. new employees are asked when concluding a contract of employment to sign first a 'blank' dismissal which can be dated later by the employer).

The new ***Employment Relationships Act*** was adopted ***in 2002*** and came into force on 1 January 2003. It is a result of long and demanding negotiations between the social partners, which finally led to a compromise. The now valid regulation on termination of employment will be further analysed in the following chapters. In short it can be said, that it reflects harmonisation of the labour legislation with the new socio-economic system, whereby the level of workers' protection is not fundamentally changed; there is no complete liberalisation (regulating termination of employment, the legislator was also bound to international norms, as for example the ILO Convention No. 158 and the Revised European Social Charter, as well as the entire acquis communitaire in this field).

New legislation on termination of employment abolished some evident inadequate provisions of the previous law. So, for example the employment relationship is not automatically terminated when an employee fulfils the criteria for retirement; it is not automatically terminated in case of an opening the bankruptcy procedure of the employer, etc. Flexibility of employment is provided also through other measures, not just through the regulation of termination of employment relationships. The level of protection of employment is still relatively high, though there is a trend towards reducing employees' rights, i.e. shorter periods of notice, reduction of severance payments, etc.

1.6. Proposals for amendments in the regulation of the termination of employment relationships

After the adoption of the new labour legislation the demands for changes of the legal regulations regarding employment relationships towards a more liberal legislation as well as demands for more flexible modes of employment did not cease. After the last elections in 2004 which the right-wing coalition won, those demands were even intensified. In 2005 the Government prepared a plan of activities for major changes of economic and social system which also includes changes in the field of labour.

*In July **2005*** the Government adopted 'A *Strategy on the Development of Slovenia'*, one of the five priorities being 'A modern welfare state and an increased employment'. Among others, this programme envisages an *improved flexibility* of the labour market and an increased flexibility of employment. In order to achieve the goals of these priorities, the action plan for 2005 and 2006 includes – among others – the following measures: *loosening of regulations on employment, encouraging flexible forms of employment, reduction of severance payments, simplifying dismissals for economic reasons, etc.*

One of the 68 measures in the document *'The framework for economic and social reforms for the increase of welfare in Slovenia'* adopted by the Government in November 2005 is the Measure No. 54 on *'increased flexibility in the labour market and encouragement of employment'*. Its purpose is to harmonise "…the level of job protection with the flexibility of employment", to reduce the reluctance of employers to employ workers for indefinite period of time; to encourage more flexible forms of employment, etc. The envisaged aims further include limitation of severance payments for workers and managers, shortening of minimal periods of notice, as well as removal of reasons for "…rigidity of protection of employment in case of collective redundancies"**.**

So far *no concrete amendments to the Employment Relationships Act* concerning termination of employment have been prepared; no such Proposal has been filed to the Parliament so far. It remains to be seen whether and if at all there will be any changes in the future. The unions strongly oppose any changes to the present labour legislation. The negotiations between the social partners are therefore expected to be long and hard, whereby it is difficult to foresee the outcome. However, the above documents indicate that the Government intends to simplify the present regulation on termination of employment and make it more flexible, which necessarily means the reduction of rights and guarantees the employed workers enjoy at present. It is hard to say whether the envisaged measures will make employment easier and consequently lead to increase of employment.

2. Sources of law

2.1. Constitutional status of the rules on the right to work and other important constitutional provisions

Constitution of the Republic of Slovenia (*Ustava Republike Slovenije,* Official Gazette of the Republic of Slovenia, Nos. 33/91-I, 42/97, 66/2000, 24/03 and 69/04) does not explicitly regulate termination of employment relationships, nevertheless several constitutional provisions have to be considered when analysing this issue, especially *Article 49 (freedom of work)* and *Article 66 (protection of work),* but also *Article 14 (equality before the law), Article 2 (principle of a social state), Article 50 (right to a social security),* etc., just to mention the most important ones. Slovenian Constitution does not use the term 'right to work'; rather it speaks of 'freedom of work' and 'protection of work'.

Article 49 of the Constitution states that "freedom of work shall be guaranteed", that "everyone shall choose his or her employment freely", that "everyone shall have access under equal conditions to any position of employment" and that "forced labour shall be prohibited".

According to Article 66 of the Constitution "the state shall create opportunities for employment and work, and shall ensure the protection of both by law".

These constitutional provisions do not guarantee the continuous or permanent employment or any employment at all. Rather, the Constitution imposes on the State the obligation to create opportunities for employment and work, and to ensure the protection of both by law. This includes also the appropriate regulation of the termination of employment relationships. The legislature and only the legislature (not, for example, the parties to a collective agreement, or employers themselves) may determine the reasons for the termination of an employment relationships, and by doing this, it must not encroach on constitutional rights.

2.2. International agreements and conventions

International norms related to the termination of employment are important sources of law in Slovenia as well. According to *Article 8 of the Constitution* ratified and published international agreements are incorporated in Slovenian law; as they apply directly, laws and other regulations must comply with them. Slovenia is a member of the United Nations (UN), the International Labour Organisation (ILO), the Council of Europe (CE) and since 1 May 2004 also a member of the European Union (EU).

The International Covenant on Economic, Social and Cultural Rights, whose Article 6 on the right to work is of relevance to the discussed issue was ratified in 1971 by the former Yugoslavia; Slovenia is bound by the Covenant on the basis of a legal succession (Act of ratification published in the Official Gazette, No. 7/71; Act of notification of the succession published in the Official Gazette, International Treaties, No. 9/92, 17 July 1992).

In Slovenia, as well as in many other European countries, the termination of employment is regarded as an integral part of the right to work. The right to work is understood as a principle, a declaration of intent, rather than an individual, enforceable right. The state has to do its best to create opportunities (equal opportunities for all) for employment and work.

Slovenia is also bound by the ILO conventions, which were already ratified by former Yugoslavia, on the basis of legal succession. Slovenia is therefore *bound by the ILO Convention No. 158 concerning termination of employment at the initiative of the employer, 1982* (Official Gazette, International treaties, No. 4/84, 18 May 1984) and *the ILO Convention No. 135 concerning protection and facilities to be afforded to workers' representatives in the undertaking, 1971* (Official Gazette, International treaties, No. 14/82, 31 December 1982). Slovenia is bound by the ILO conventions concerning protection against discrimination, which are relevant in the context of termination of employment relationships as well, for example *the ILO Convention No. 111 concerning discrimination in employment and occupations, 1960* (Official Gazette, No. 3/61) and *the ILO Convention No. 103 concerning maternity protection, 1952* (Official Gazette, International treaties, No. 9/55). Slovenia notified its legal succession to all the above mentioned conventions in 1992 (Act of notification published in the Official Gazette, International Treaties, No. 15/92, 13 November 1992). Contrary to that Slovenia has *not yet ratified* the ILO conventions Nos. 145 and 151.

In 1999, Slovenia ratified *European Social Charter (revised), 1996* (Official Gazette, International Treaties, No. 7/99, 10 April 1999). On the basis of declaration according to Article A of part III of the Charter and Article G of the Part V of the Charter Slovenia is bound by all its provisions except the first and the fourth paragraph of Article 13 and the second paragraph of Article 18 of part II of the Charter. That means that Slovenia is bound by all provision of the Charter which are relevant to the issue of termination of employment relationships, especially: Article 1 (right to work), *Article 24* (right to protection in cases of termination of employment), *Article 29* (right to information and consultation in collective redundancy procedures), fourth paragraph of Article 4 (reasonable period of notice), second paragraph of Article 8 (protection against dismissal for pregnant women and during maternity leave), Article 20 (right to equal opportunities and equal treatment), third paragraph of Article 27 (workers with family responsibilities) and others.

As a member of the EU, Slovenia is also bound by all *acquis communitaire*, the Charter of Fundamental Rights of the European Union, the Community Charter of the Fundamental Social Rights of Workers and the relevant EC directives (especially Council Directive *98/59/EC* of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, which consolidates Directives 75/129/EEC and 92/56/EEC, but in certain questions also others, such as Council Directive *2001/23/EC* of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, which consolidates Directives 77/187/EEC and 98/50/EC; Council Directive *80/987/EEC* of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer and Directive 2002/74/EC of 23 September 2002 amending previous Directive; etc.).

All the above mentioned international documents relating to the termination of employment were considered in the preparation and formulation of the new labour legislation (Proposal of the Employment Relationships Act, *Predlog Zakona o delovnih razmerjih*, Journal of the National Assembly of the Republic of Slovenia, No. 50/97, 24 October 1997, p. 14).

2.3. Sources of law and their hierarchy

Among national sources of law the Constitution is the most important one and on the top of the hierarchy. Laws and other regulations must be in conformity with the Constitution. As

already pointed out (see 2.2.), laws and other regulations must also be in conformity with ratified and published international treaties.

Laws (statutes) regulating termination of employment relationships in Slovenia include:

- ***Employment Relationships Act*** (*Zakon o delovnih razmerjih*, Official Gazette of the Republic of Slovenia, No. 42/02, 15 May 2002) – ***ERA***, especially Articles 75-119;
- ***Public Servants Act*** (*Zakon o javnih uslužbencih*, Official Gazette of the Republic of Slovenia, Nos. 56/02, 23/05, 113/05) – ***PSA***, especially Articles 153-162;
- ***Pension and Disability Insurance Act*** (*Zakon o pokojinskem in invalidskem zavarovanju*, Official Gazette of the Republic of Slovenia, Nos. 106/99 et al., 104/05 – consolidated text), especially Articles 102-106, and ***Vocational Rehabilitation and Employment of Persons with Disabilities Act*** (*Zakon o zaposlitveni rehabilitaciji in zaposlovanju invalidov*, Official Gazette of the Republic of Slovenia, Nos. 63/04, 78/05, 100/05 – consolidated text);
- laws regulating certain occupations or certain sectors of activity, for instance:
    - for military service and armed forces the ***Defence Act*** (*Zakon o obrambi*, Official Gazette of the Republic of Slovenia, Nos. 82/94 et al., 103/04 – consolidated text),
    - for police the ***Police Act*** (*Zakon o policiji*, Official Gazette of the Republic of Slovenia, Nos. 49/98 et al., 3/06 – consolidated text),
    - for education the ***Organisation and Financing of Education Act*** (*Zakon o organizaciji in financiranju vzgoje in izobraževanja*, Official Gazette of the Republic of Slovenia, Nos. 12/96 et al., 98/05 – consolidated text),
    - for cultural sector the ***Act on Enforcing Public Interest in the Field of Culture*** (*Zakon o uresničevanju javnega interesa za kulturo*, Official Gazette of the Republic of Slovenia, No. 96/02), etc..

The ERA is the most important legal source for the termination of employment. It includes a special chapter on termination of employment. Numerous provisions regulate this issue in its entirety: they lay down different grounds for terminating employment relationships, regulate procedural and substantive requirements for termination of employment, legal consequences and remedies, etc. The most comprehensive part of this chapter is dedicated to dismissal.

The ERA and its provisions on the termination of employment apply generally to *all employment relationships* under Slovenian jurisdiction. They apply to employment relationships between employers established or residing in the Republic of Slovenia and the workers employed with them, but also to employment relationships between foreign employers and workers, concluded on the basis of an employment contract on the territory of the Republic of Slovenia. For the posted workers, employed on the basis of an employment contract pursuant to foreign law, Article 213 of the ERA is of relevance: certain rights (referring to the working time, breaks and rests, wages, safety and health at work, etc.) have to be ensured to the posted workers according to the Slovenian laws and collective agreements, if these are more favourable for the worker, but termination of employment is not among these issues.

The ERA applies to the public sector as well, unless stipulated otherwise by a special act.[2] This special act is the Public Servants Act (PSA), which also contains special provisions on the termination of employment. Special provisions related to the termination of employment

[2] The ERA speaks of the workers employed with state bodies, local communities and institutions, other organisations and private persons carrying out a public service.

can be found in certain laws regulating particular occupations or particular sectors of activity, for example educational sector, health care, police, military service, etc. Usually, only certain questions of the termination of employment are regulated differently by these special laws, so, for all other questions of the termination of employment general rules of the ERA are relevant. The principle '*lex specialis derogat legi generali*' applies.

The legal rules on the termination of employment contained in the ERA, the PSA and other laws are *mandatory*. The employer and the employee must follow the statutory provisions on the termination of employment; the autonomy of the contracting parties is limited. But, a contract of employment as well as a collective agreement may lay down rights which are more favourable for the worker than those laid down in the ERA; few exceptions to this fundamental rule of labour law are explicitly allowed by Article 7 of the ERA, one of them being also the length of the period of notice (collective agreements may lay down shorter periods of notice for smaller employers than is provided by law).

In Slovenia ***collective agreements*** are important legal source in the field of labour law. They also contain provisions in relation to the termination of employment, for example:

- detailed provisions regulating the criteria for determining the redundant workers,
- conciliation procedure with trade-unions in case of redundancies,
- severance payments,
- periods of notice.

Collective bargaining is rather centralised. More important is the collective bargaining at the general, national level, whereas collective bargaining at the enterprise level is not so important. Collective agreements have normative, binding effect and they apply directly; parties to a contract of employment may depart from them only when this is to the advantage of employees.

An individual ***contract of employment*** regulates a particular employment relationship. It may regulate issues of the relationship between an employer and an employee, including termination of employment, only in a manner more favourable for an employee than otherwise provided by laws and collective agreements which apply in this case. Considering that the issue of termination of employment is regulated in detail by law and collective agreements, the importance of a contract of employment for regulating termination of employment relationship is rather small in practice for the majority of workers. In practice, contracts of employment often contain only provisions on the length of the period of notice, also non-competition clauses are common. Few employees, mainly those on managerial or leading positions, have provisions in their contracts guaranteeing them higher amounts of severance payments than stipulated in the law.

2.4. Role of judge-made law and custom

In Slovenia, which follows the tradition of continental legal systems, 'judge-made law' and custom do *not* constitute a formal source of law. Nevertheless, in practice the case law of labour courts and of the Constitutional Court is rather *important for the interpretation of legal rules* on the termination of employment. In the majority of cases before labour courts there is a dispute over the termination of employment relationship. Case-law of labour courts is particularly important in defining grounds for dismissal, in determining more precisely the obligations of an employer for the fulfilment of formal requirements, also in appreciation of criteria for the selection of redundant workers; many judgements of labour courts refer to

fixed-term contracts as well. The judge as well as the individual in a dispute who suspects that the legal provision which is to be applied is unconstitutional or that his or her constitutional rights have been encroached may refer the matter to the Constitutional Court. Important decisions of the Constitutional Court dealing with the termination of employment refer, for example, to the issue of a non-competition clause and the question of freedom of work, to the *ex-lege* termination of employment when reaching the retirement age, especially if the retirement age is different for women and men, to the severance payment in the case of employer's insolvency and a question of equal treatment of all redundant workers, to the question of a mandatory nature of legal rules on termination of employment relationships, including severance payments, and the possibility that an employee renounces her or his statutory rights, etc.

In Slovenia the role of custom is very limited. It could even be said that custom has no role at all; it is not recognised as a formal legal source, nor does the labour court ever refer to it when deciding the cases.

3. Scope of the rules governing the termination of an employment relationship, special arrangements

3.1. Ways of terminating an employment relationship

Article 75 of the ERA determines the following modes of terminating a contract of employment:

- expiry of the period for which it was concluded,
- death of the worker,
- death of the employer-natural person,
- mutual agreement,
- ordinary and extraordinary dismissal,[3]
- court judgement,
- by operation of law,
- in other cases stipulated by law.

According to Article 119 of the ERA, employment relationship terminates by operation of law:

- in case of a permanent disability of an employee and
- if a work permit for employment of a migrant worker expires or terminates.

Modes of termination of employment relationships may be stipulated only by law, and not, for instance, by administrative regulations or by collective agreements nor by an individual contract of employment.

According to the ERA, a contract of employment is *not* terminated:
- by opening of bankruptcy or other insolvency procedure or liquidation procedure,
- by reaching certain age or by fulfilling conditions for retirement,
- in case of a transfer of (parts of) undertaking or businesses of the employer,
- in case of a temporary employee's incapability for work.

3.2. Exceptions or specific requirements for certain employers or sectors

In Slovenia there are special rules on termination of employment for the following employers or sectors:

- public sector (public servants),
- military service and police service,
- education, culture, etc.

Special rules on termination of employment in the Public Servants Act do not apply to the entire public sector. They apply only to the public servants who are *employed in the State bodies*, for example in the Government and its respective ministries, National Assembly, courts, the Constitutional Court, the Court of Audit, inspectorates, the Human Rights Ombudsman, etc., and *in the administration of local communities*. However, these special rules do not apply to public agencies and institutions, public funds and other public law

[3] The term 'dismissal', as used in the ERA, covers the termination of a contract of employment at the initiative of the employer (dismissal in the study's terminology) as well as at the initiative of an employee (resignation). 'An ordinary dismissal' means a dismissal/resignation (i.e. termination of employment relationship with period of notice), whereas 'an extraordinary dismissal' means summary dismissal/resignation (i.e. termination of employment relationship without period of notice).

entities. They do *not* apply, for example, to teachers in public schools, doctors in public hospitals, etc. They do not apply to public-sector companies, as well.

For teachers and other persons, who are employed in educational institutions (public or private) the ordinary regulation of termination of employment in the ERA is relevant; there are only few special provisions in the Organisation and Financing of Education Act, regulating more precisely a redundancy situation and a dismissal for economic reasons. Similarly, for workers in the cultural sector there are few special provisions relating to dismissal for economic reasons and the right to a severance payment.

Military service is regulated by the Defence Act. Soldiers and other persons, who are employed in armed forces, are subjected to a special system of recruitment and termination of employment, very much different from the ordinary rules. The Police Act contains some special provisions on the termination of employment as well. Special rules regulate, for example, a special system of recruitment and termination of employment for employees within the police forces, needed for the control of outer borders of the EU. There are also some special rules on termination of employment in relation to different examinations an employee in police forces has to pass.

3.3. Exceptions or specific requirements for certain types of contract

Besides a contract of employment for indefinite period of time (which is supposed to be the prevailing type of employment according to the ERA) different types of the so called atypical, flexible contracts of employment exist in Slovenia. The ERA regulates a fixed-term employment, temporary work, home work, part-time work. All of them are considered as employment contracts and labour legislation applies to them wholly. Part-time workers, temporary workers, home workers and workers with fixed-term contracts enjoy the same rights as all other workers. There are also no specific rules governing the termination of these special employment contracts (except, of course, for a fixed-term contract which terminates with the expiry of the period for which it was concluded – this is actually its most important characteristics).

For ***part-time work*** there is absolutely no specific provision relating to the termination of employment.

Home workers are ordinary workers who enjoy all protection by the labour legislation. There is no specific provision relating to the termination of this kind of employment contract either. All ordinary rules on termination of employment relationship apply. In practice, a lot of home work is carried out outside the regular employment relationship, with no employment contract concluded in accordance with the law.

An employment contract for ***temporary work*** may be concluded for a definite or indefinite period of time and depending on that it follows the relevant ordinary rules on termination of employment. There is only one special provision for the temporary work relating to the issue of termination of employment; Article 58 of the ERA states that a premature cessation of the user's need for a temporary worker shall not represent a valid reason for terminating an employment contract of this worker by the temporary work agency.

A fixed-term contract[4] may be concluded for a definite period of time or for the completion of a fixed task.

According to Article 77 of the ERA a fixed-term contract of employment terminates without notice:
- upon the expiry of the time for which it was concluded or
- upon the completion of the agreed work or
- upon the cessation of the reason for which the contract was concluded.

A fixed-term contract may terminate *prior* to the expiration of the period for which it was concluded or prior to the completion of the agreed task, if:
- so agreed by the contractual parties or
- other reasons occur for the termination of employment pursuant to the law.

That means that general rules on termination of employment apply, including provisions on ordinary dismissal/resignation. Neither the employer nor the employee have to present any additional reason for the premature termination of a fixed-term contract, they just have to follow general rules on termination of employment. Such solution (rather different from the regulations in many other European countries where a premature termination is, usually, possible only in exceptional cases) may raise some doubts. After all, it lies in the nature of a fixed-term or fixed-task contract that the contracting parties determine the end of their contract relationship upon concluding it, since the work to be performed is of a temporary nature. According to the first versions of the Proposal of the ERA a premature termination of a fixed-term contract should be allowed only in exceptional cases, thus, an ordinary dismissal/resignation should not be possible.

A fixed-term contract may be concluded only in cases, laid down by the law (in general, if the work is of a temporary nature), and the period of time for which it is concluded, including its continuous prolonging, is limited to a maximum of two years (until year 2007, and for smaller employers until year 2010, a maximum period of time is three years). If a fixed-term contract is concluded contrary to law or collective agreement, or if the worker continues to work even after the expiry of the contract, it is assumed that the worker had concluded a contract of employment for an indefinite period of time. That means that such contract may be terminated only according to the ordinary rules as an open-ended contract. According to the case-law a transformation from the fixed-term contract into the contract for indefinite period of time takes place automatically, thus, no action by the employee within the time limits for filing a lawsuit is required.

Apprenticeship is considered as a part of an employment relationship (exceptionally, apprenticeship may be carried out on the voluntary basis, without an employment relationship), so, ordinary rules on termination of employment relationships apply. There is an important rule in Article 123 of the ERA: during apprenticeship the employer may not terminate an employment contract, except if there are reasons for a summary dismissal or in cases of bankruptcy, compulsory composition or liquidation of the employer.

During ***probationary period,*** at the beginning of an employment relationship, special rules for terminating employment relationships apply. There is shorter period of notice for an employee wishing to resign during probationary period (seven days). An employer may not terminate an

[4] This kind of contracts should be an exception. In practice, around 70% of all new employments are based on a fixed-term contract.

employment contract during probationary period, except if there are reasons for a summary dismissal or in cases of bankruptcy, compulsory composition or liquidation of the employer. If the employee is not successful, an employer may dismiss him or her upon the expiry of the probationary period. The probationary period may not last longer than the first six months of the employment and it may be extended only in case of temporary absence from work. (For more see Appendix I)

In Slovenia, there are no special provisions in labour legislation regulating work on call or intermittent work or solidarity contracts.

Labour legislation does <u>not</u> cover *'economically dependent workers'*. There are also no proposals to include this type of work within the framework of labour legislation at the time. If the work is carried out on the basis of civil law contract, labour legislation does not apply. However, Article 11 of the ERA explicitly states that if the elements of employment relationship exist, work may not be carried out on the basis of civil law contracts, unless stipulated otherwise by the law. When considering whether the elements of employment relationship exist in a particular case, the definition of an employment relationship in Article 4 of the ERA is relevant: »… a relationship between the employee and the employer, whereby the employee is voluntarily included in the employer's organised working process, in which she or he in return for remuneration continuously carries out work in person according to the instructions and under the control of the employer«.

3.4. Exceptions or specific requirements for certain categories of employer

There are few exceptions for ***smaller employers***. According to Article 5 of the ERA, a smaller employer is an employer employing *ten or less employees*. For smaller employers shorter periods of notice may be determined by branch collective agreements than provided for by the law (Article 91 of the ERA). Apart from that, smaller employers do not have to check whether it is possible to find a replacement or another appropriate job for the employee, the employer wishes to dismiss for economic reasons or reason of incapacity (Article 88 of the ERA).

The size of the employer (number of employees) is also important in connection with collective dismissals (see below under 6.5.3.).

3.4. Exceptions or specific requirements for certain categories of employee

Managers may be excluded from ordinary rules on termination of employment. According to Article 72 of the ERA, a contract of employment with managers may differently regulate certain rights, obligations and responsibilities arising from employment relationship, among others, different rules on termination of employment may be stipulated in the contract.

In Slovenia, the legislation does not make a distinction between white- and blue-collar workers; the same rules apply to all.

The following categories of workers enjoy ***special legal protection*** in case of a dismissal:

- workers' representatives,
- older workers,
- pregnant workers and parents (workers with family responsibilities),
- workers with disabilities and workers absent due to illness.

Workers' representatives are trade-union representatives as well as elected employees' representatives. According to Article 113 of the ERA, an employer may not dismiss a workers' representative without the consent of the body whose member he or she is (for example works council) or without the consent of the trade-union (in case of trade union representative), if an employee acts in accordance with the law, the collective agreement and the employment contract, except if a protected employee rejects the offered appropriate employment in the case of a dismissal for economic reasons or if the procedure for the cessation of the employer is at stake. Workers' representatives enjoy special protection during the entire period of their term of office and another year after its expiry.

Special protection for ***older workers*** is regulated by Article 114 of the ERA. The employer may not dismiss an older worker on the ground of an economic reason without written consent of the worker concerned, until he or she fulfils the minimum conditions for acquirement of the old-age pension, unless he or she is entitled to the unemployment benefit until the retirement. Such protection does not apply in the case of a cessation of the employer.

According to Article 115 of the ERA, an employer may not dismiss a female worker during her ***pregnancy*** and all the time she is ***breastfeeding***. An employer may not dismiss a worker during the entire period of his or her absence due to the ***parental leave*** in the form of a full absence from work. In the protected period, the employment relationship may not come to an end due to the employer's dismissal nor may an employer dismiss a protected employee. If an employer is not aware of the pregnancy of the worker when dismissing her, special protection against dismissal applies if she immediately informs her employer about the pregnancy. In exceptional cases an employer may dismiss such employee and the employment relationship may come to an end, but only after the preliminary consent by the labour inspector, if there are reasons justifying a summary dismissal or in the case of cessation of the employer.

According to Article 116 of the ERA, an employer may not terminate the employment contract to ***an employee with disabilities*** because of an established disability of second or third degree or for economic reasons, except if it is not possible to assure him or her another appropriate work or part-time work, in accordance with the regulations on pension and disability insurance or, respectively, in accordance with the regulations on training and employment of persons with disabilities (see above under 2.3.). The employment relationship of an employee dismissed for economic reasons or for reason of incapacity, who is upon the expiry of the period of notice ***absent from work due to illness or injury***, is terminated on the day the health capacity for work is established and no later than upon the termination of six months after the expiry of the period of notice. Special protection of employees with disabilities and employees, who are absent due to illness or injury, does not apply in the case of a cessation of an employer.

4. Mutual agreement

4.1. Substantive conditions

Labour legislation contains only few provisions on termination of employment by mutual agreement. Since an employment relationship is terminated at will of an employee, it is considered that special protection of an employee by labour legislation is not needed. Of course, the main question in this regard is whether the employee really wishes to terminate the employment relationship or not. In practice, mutual agreements often conceal a dismissal.

According to Article 79 of the ERA, a contract of employment may be terminated at any time by a written agreement between the parties. The agreement must include the provision about the consequences for the worker in exercising the rights arising from the unemployment insurance. Thus, the *labour legislation does not prescribe any substantive conditions (only formal ones)* to be fulfilled in order to conclude a valid termination agreement. The general rules on contracts apply. The parties do not have to follow the rules on dismissals.

Nevertheless, according to *the case-law* of labour courts, a mutual agreement on termination of employment has to fulfil certain substantive conditions in order to be valid. It is necessary to establish that the agreement is really genuine, that *the employee's will to terminate an employment relationship is real, serious and free, that the agreement was not concluded under force or threat or by fraud of an employer*. There has to be an explicit and clear declaration of the employee's will, which leaves no doubts about the intention to terminate the employment. Case-law attempts to protect an employee against misuse of this mode of employment termination by the employer.

In practice, there are cases of the so called *'bianco' mutual agreements* (also *'bianco' resignations),* whereby before the conclusion of a contract of employment an employer asks from job-seekers, the future employees, to sign an empty mutual agreement (or an empty letter of resignation) in order to make it possible for the employer to fill in a date when he or she wishes to dismiss an employee. Here again, the case-law is relevant. In one of its rulings the labour court said that such agreement is void. There was no real and free will of the employee. In this case the termination of employment was in fact solely a consequence of the employer's will. An employee can not waive her or his rights in connection with the termination of employment. This was in fact a concealed dismissal and therefore rules on dismissal should be respected.

4.2. Formal requirements

As already said above, a mutual agreement on termination of employment has to:

- be *in writing*,
- include the provision *about the consequences* for the worker in exercising the rights arising from the unemployment insurance.

An agreement which is not concluded in writing is invalid and has no effect.

4.3. Effects of the agreement

The employment relationship is terminated in consequence of the agreement by the will of both contracting parties. In this case the parties alone determine the date of the termination of

employment and also the rights and obligations for each of them. There are *no* statutory minimum rights for the employee in this case. Rules on dismissal do not apply. An employee does *not* have the right to a severance payment provided for by the law; *everything depends on the agreement between the parties*. There is no minimum period of notice.

A (former) employee is *not* entitled to unemployment payments.

Termination of employment by mutual agreement has no special effect on the retirement pension schemes, different from the ordinary ones (the pension insurance relationship ends upon termination of employment relationship; the acquired periods of insurance are safeguarded). The mode of termination of employment or other legal relationship which was the basis for pension insurance does not play a role when acquiring the retirement pension rights. Termination of employment by mutual agreement has no special effect on health insurance and entitlements arising from it (the health insurance relationship based on the employment relationship ends upon termination of employment relationship, however, it is continued on the basis of another legal status of the person).

4.4. Remedies

If an employee believes that an agreement is unlawful and void, he or she may *bring an action before the competent labour court*. An action must be brought before the court *within 30 days* from the day of termination or the day when the employee learnt about the violation.

Trade unions may represent their members before the court only with the authorisation of the member concerned. Usually they offer their members free legal assistance. According to *the Free Legal Aid Act* (*Zakon o brezplačni pravni pomoči*, Official Gazette of the Republic of Slovenia, Nos. 48/01 et al., 96/04 – consolidated text) the state provides for a free legal aid for persons with low income. In disputes concerning the termination of employment the court has to act rapidly. Nevertheless, such cases are pending before labour courts for quite a long time.

If an employee's action is successful, the court orders a *reinstatement* of the employee and the payment of all wages he or she would have earned had there not been an illegal termination of employment.

4.5. Vitiating factors

General principles on contracts apply.

4.6. Penalties

According to the ERA, certain violations of employees' rights committed by the employer are considered as an offence and a fine may be imposed on the employer, whereas violations in connection with the mutual agreement are *not* considered as such.

Certain acts or omissions by the employer seriously violating the rights of employees are punishable as a criminal offence according to the Penal Code; in practice, these provisions of the Penal Code are used very rarely.

4.7. Collective agreements

As a rule, collective agreements do *not include any particular provisions* dealing with the termination of employment by mutual agreement. All is left to the contractual parties themselves. Exceptionally, the branch collective agreement for banking sector comprises certain provisions on termination of employment by mutual agreement; it regulates the procedure to be followed by the employer when proposing such agreement to the employees, content of the employer's offer, special rights which could be offered to the employees, such as severance payments, compensations, etc.

4.8. Relation to other forms of termination

Termination of employment by mutual agreement is a special mode of terminating a contract of employment, which differs from all others modes of termination (see 3.1.). Legal rights and obligations of the parties are different from those in the case of dismissal. Therefore it is important to be able to distinguish a termination of employment relationship by mutual agreement from a dismissal. It is important to have exact knowledge, whether there is a valid mutual agreement in a particular case or not. The termination of employment is regarded either as a termination by mutual agreement or as a dismissal. According to the case law, the fact that the employee concerned agreed to become one of redundant workers does not change a dismissal for economic reasons into something else – it is still a dismissal, not a termination by mutual agreement.

Termination by mutual agreement should not be confused with agreements which the respective parties may conclude in connection with a dismissal. The first one is *an agreement on compensation instead of the period of notice*. Such agreement does not change the nature of a dismissal, which has already been carried out; it only deals with the legal consequences of a dismissal and has an effect on the period of notice and on the date of the termination of employment. It must be in writing. The termination mode is still a dismissal; therefore the employee enjoys all other rights provided for by the law and collective agreements. The second agreement, which may be concluded in connection with a dismissal, yet it does not change the nature of a dismissal, is *a settlement agreement*. This agreement, too, deals with the consequences of the dismissal or other modes of termination of employment, rather than having an effect on the termination of employment itself. A settlement agreement may be concluded only after a dismissal (and not instead of a dismissal).

5. Termination otherwise than at the wish of the parties

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

A contract of employment is terminated by operation of law in the following cases:

- expiry of a *fixed-term* and *fixed-task* contract of employment (see 3.3.),
- *death of the employee*,
- *death of the employer-natural person*, if his or her successor(s) do(es) not continue uninterruptedly the activity of the deceased employer,
- *permanent inability to work, disability of an employee*, which entitles to a disability pension,
- *nullity* of a contract of employment,
- expiry or termination of *a work permit* for employment of migrant workers,
- termination of employment contract on the basis of *a court judgement.*

The following is ***not*** a ground for the termination of employment by operation of law:

- *Reaching certain age, the retirement age, or fulfilling the conditions for retirement.* This was a ground for ex lege termination of employment according to previous labour legislation. In 1999 The Constitutional Court found those provisions unconstitutional and consequently they do not apply any more. Certain special laws nevertheless retained such provisions, for example, the Defence Act. The latest changes regarding the regulation of termination of employment relationships in the Public Servants Act dating from the end of 2005 enacted again this mode of termination of employment relationships for employees in the State bodies and administration of local communities.
- *An opening of a bankruptcy procedure or a compulsory composition procedure or a liquidation procedure.* Before the enactment of the ERA in 2002, an opening of a bankruptcy or liquidation procedure was also a ground for ex lege termination. Now, according to valid legislation, rules on dismissal have to be followed with certain exceptions and special requirements.

5.2. Procedural requirements

There are *no procedural requirements* in the above cases where an employment contract terminates by operation of law. The main characteristic of these cases is that neither party has to do anything in order for a contract to be terminated. *A contract terminates irrespective of the will of the parties and irrespective of any activity of the parties.*

An expiry of a fixed-term contract is in fact not a termination of a contract irrespective of the will of the parties, since their will that a contract be terminated at the given point of time was expressed when concluding a contract of employment.

In case of termination of employment due to a *permanent disability* of the employee, prior to the termination of employment, a complex procedure according to the Pension and Disability Insurance Act had to be carried out before the competent authority of the pension and disability insurance institution. But this is a procedure concerning the social insurance relationship; from the point of view of the employment relationship it is just a fact and if this social insurance procedure ends with a decision that the person concerned is permanently incapable to work, this constitutes a ground for the termination of employment relationship by operation of law, that means that neither party is obliged to do anything else.

Nullity of a contract of employment has to be established in the legal proceedings before the competent labour court. In such a case there is no time limit for bringing an action before the court.

Termination of employment relationship *on the basis of a court judgement* was introduced in Slovenian labour legislation in 2002 for the first time. If in the case of a dispute, a dismissal is found invalid, yet the court establishes that the continuation of the employment relationship would no longer be possible, it may decide (upon or without employee's request) that an employment relationship existed until the first instance judgement. In this case the court will also determine the date of the termination of employment relationship. The same type of the court judgement is foreseen if an action challenging the validity of an employment contract is brought before the court.

5.3. Effects of the existence of a ground

An employment relationship is terminated automatically, if one of the grounds stipulated in the law come to an existence (see above under 5.1.).

An employee is *not* entitled to *a severance payment,* as regulated by law, in any of the above cases of the termination of employment by operation of law.[5] According to collective agreements, an employee is entitled to a severance payment in the case permanent disability is established by a competent authority and the employee who is entitled to a disability pension, enters a retirement. Collective agreements also provide for the so called solidarity benefit in case of death of an employee; entitled to it are the close relatives of the deceased.

An employee is entitled to *unemployment benefit* in case of termination of employment by operation of law, except in the case a termination of employment is based on a court judgement, if it was reached upon employee's request.

Termination of employment by operation of law has no special effect on retirement pension schemes and no special effect on health insurance, different from the ordinary effects which take place irrespective of the mode of termination of employment. (See above 4.3.)

5.4. Remedies

If an employee believes that the termination of employment relationship is illegal or his or her rights in connection with the termination are infringed, he or she may *bring an action before the competent labour court*. An action against illegal termination of employment must be brought before the court *within 30 days* from the day of termination or the day when the

[5] According to the ERA, *an employee is entitled to* ***a severance payment*** in the following cases of a termination of employment:
- in case of a *dismissal for economic reasons*, including a dismissal which occurs in the framework of bankruptcy procedure, compulsory composition procedure or liquidation procedure or any other procedure intended to reach the cessation of the employer;
- in case of a *dismissal for reason of incapacity* of an employee (i.e. personal reason);
- in case of *a summary resignation by an employee*;
(in all three cases mentioned above a severance payment is calculated according to Article 109 of the ERA);
- in case of a dismissal or a resignation which is followed by *retirement of an employee* (in case of retirement the severance payment is calculated according to Article 132 of the ERA and is lower than the severance payment according to Article 109).

employee learnt about the violation. Claims for rights arising from employment relationship have to be asserted within the period of five years.

Trade unions may represent their members before the court only with the authorisation of the member concerned. Usually, they offer their members free legal assistance. According to the Free Legal Aid Act, the state legal aid system is available for persons with low income. In disputes concerning the termination of employment the court has to act rapidly. Nevertheless, such cases are pending before labour courts for quite a long time.

If an employee's action is successful, the court orders a *reinstatement* of the employee and *payment of wages* he or she would have earned had not been illegal termination of employment.

5.5. Penalties

Certain violations of rules governing the fixed-term contract (among them, if an employer does not respect a transformation of illegal fixed-term contract into a contract for indefinite period of time and thus not recognise that a contract has not been terminated) may be considered as *an offence* and a fine may be imposed on the employer.

Certain acts or omissions by the employer seriously violating the rights of employees are punishable as a criminal offence according to the Penal Code; in practice, these provisions of the Penal Code are used very rarely.

5.6. Collective agreements

Collective agreements provide for a severance payment or other payments in certain cases of termination of employment by operation of law (see above 5.3.).

6. Dismissal

6.1. Introductory overview

In Slovenia there are two kinds of a dismissal:
- ordinary dismissal,
- extraordinary dismissal (i.e. summary dismissal).

Ordinary dismissal is a dismissal with a period of notice. An employment relationship terminates after the expiry of the period of notice, which is determined by law, collective agreement or by an individual contract of employment. A valid reason justifying a dismissal has to be demonstrated by the employer. The law distinguishes between three valid reasons for an ordinary dismissal:
- economic (business) reason,
- reason of incapacity,
- reason of misconduct.

A special mode of an ordinary dismissal is a dismissal by offering a new contract.

A summary dismissal is a dismissal without a period of notice. An employment relationship is terminated at once. This is possible only in exceptional cases laid down by the law, when it is not possible to continue the employment relationship until the expiration of the period of notice or until the expiration of the period for which the employment contract was concluded (grave misconduct of an employee and some other reasons). An employer has to present the reason justifying such dismissal.

The law also lays down formal, procedural requirements, which an employer has to respect in order for a dismissal to be valid. They differ according to the mode and reason for dismissal.

6.2. Dismissal contrary to certain specified rights or civil liberties

Article 89 of the ERA explicitly states that the following grounds are not valid at all:
- temporary absence from work due to inability for work because of illness or injury or due to the care for a dependant family members pursuant to rules on health insurance;
- temporary absence from work due to parental leave pursuant to regulations on parenthood;
- bringing an action or participation in the proceedings against the employer due to the allegation of having violated the contractual and other obligations arising from employment before the arbitration, court or administrative authorities;
- trade union membership;
- participation in trade union activities outside the working time;
- participation in trade union activities during the working time in agreement with the employer;
- participation in a strike organised in accordance with the law and strike rules;
- candidacy for the function of employees' representative and the current or past performance of this function (the trade-union representatives as well as the elected representatives of the employees);
- race, colour, sex, age, disability, marital status, family obligations, pregnancy, religious and political conviction, national or social origin.

Termination of employment which is based on one of these grounds is illegal and therefore invalid. That does not mean that all other grounds are valid reasons for a dismissal. Grounds, which are not explicitly prohibited by the law, are valid only, if they fulfil substantive requirements for one of the valid reasons laid down by the law (if they can be regarded either as an economic reason or a reason of incapacity or a reason of misconduct); otherwise they are invalid, too. The consideration of a particular ground by the courts in case of a dispute is very important, whereas grounds which are explicitly prohibited by the law are invalid automatically.

Invalid (prohibited) reasons laid down by Article 89 of the ERA can be divided in several groups:

- protection against dismissal of the employees, who *are absent due to health reasons or due to family obligations, including parental leave* (first line);
- protection against dismissal of the employees, who *claim their rights* against their employer before judicial or other authority (second line);
- protection against dismissal due to *trade-union activity* and due to *exercising participation rights*, including protection of employees' representatives and including protection in case of a strike (third to seventh line);
- protection against *discrimination* (eighth line).

Article 6 of the ERA includes general prohibition of discrimination. Personal circumstances are defined even more widely than in Article 89. According to Article 6 of the ERA, the employer may not treat unequally the job seekers in gaining employment or the employees during the employment relationship and *in relation to the termination of employment* on the basis of *sex, race, colour, age, health or disability, religious, political or other conviction, membership in a trade union, national and social origin, family status, financial situation, sexual orientation or other personal circumstances*. Additionally, in a provision on *equal treatment and equal opportunities for women and men*, a termination of employment is explicitly mentioned, too. According to Article 6 of the ERA, direct as well as indirect discrimination is prohibited.

Certain categories of workers enjoy *special protection against dismissal*. Special statutory provisions apply aiming to protect the employees, who are especially vulnerable in relation to the employer, and thus even more at risk to be discriminated against than other employees due to their status, function or personal circumstances. Special rules aim to provide an effective protection against discrimination for these workers. Categories of workers with special protection against dismissal include:

- workers' representatives,
- older workers,
- pregnant workers and workers with family responsibilities,
- workers with disabilities and workers absent due to illness.

For a detailed overview of rules on special protection in these cases see above 3.4.

According to Article 51 of the ERA, which regulates the suspension of a contract, an employment contract is not terminated nor is an employer allowed to dismiss an employee (except if a summary dismissal is justified or in the case of cessation of an employer), if an employee is *temporarily, up to a maximum of 6 months, absent from work due to imprisonment* or a similar punishment measure, detention, military service, substitute civil service and service in reserve police forces.

6.3. Dismissal on 'disciplinary' grounds

6.3.1. Substantive conditions

In Slovenia there are two possibilities for an employer to dismiss an employee who does not act or work as expected according to his obligations and duties under the contract of employment:
- ordinary dismissal for reason of misconduct (with a period of notice) or
- summary dismissal (without a period of notice) in case of serious, grave misconduct.

6.3.1.1. Ordinary dismissal for reason of misconduct

An ordinary dismissal can take place only if there is *a justifying ground* (misconduct of the employee) and if *a period of notice* is given.

According to Article 174 of the ERA, an employer may impose different disciplinary sanctions on the employee, if he or she violates obligations and duties arising from the employment relationship; such disciplinary sanctions may not permanently change the employee's legal status. The employer may dismiss the employee only, if reasons justifying the dismissal are serious and substantiated and make the continuation of the employment relationship between the employee and the employer impossible. This provision of Article 88 of the ERA is in fact *the 'ultima ratio' rule*, which applies also in case of a dismissals for reason of misconduct.

An employer has to observe the *time limits* for a dismissal. An employer may dismiss an employee not later than within 30 days as from having found out the reasons justifying a dismissal and not later than within six months as from the occurrence of that reason. If the reason for a dismissal has all characteristics of a criminal offence, the employer may terminate the employment contract within 30 days as from having found out about the violation and the offender for the entire period in which the employee may be a subject to criminal prosecution. After these time limits the particular conduct or acts of an employee *can no longer be considered as a valid reason and can not justify a dismissal any more.* If an employer did not react promptly, that means that he or she did not consider the relevant conduct of an employee so wrongful that a further relationship with that employee be impossible.

According to the ERA, a minimum *period of notice* which an employer has to observe is 30 days. Longer periods of notice may be determined by collective agreements or by an individual contract of employment. For a smaller employer (employing ten or less employees) a branch collective agreement may determine an even shorter period of notice. Compensation instead of a period of notice may be agreed upon by a written agreement.

During the period of notice, the employee is entitled to *paid absence from work* in order to find a new employment, for a minimum of two hours per week.

The employer may *prohibit the employee to carry out work* during the period of notice and the entire dismissal procedure, if the reason for a dismissal had all characteristics of a criminal offence in which case the employee is entitled to the wage compensation amounting to half of his average wage.

6.3.1.2. Summary dismissal

In exceptional cases of grave misconduct of an employee, a summary dismissal is possible. In this case a period of notice does not have to be given and the employment relationship terminated immediately.

According to Article 110 of the ERA, a summary dismissal is allowed in the following cases:
- if an employee violates his or her obligations arising from employment relationship and this violation has all characteristics of a criminal offence,
- if an employee intentionally or by gross negligence violates the obligations arising from employment relationship,
- if an employee is prohibited by a court judgement to carry out certain work for a period longer than six months,
- if an employee has to be absent from work for a period longer than six months due to imprisonment,
- if an employee fails to successfully pass the probationary period,
- if an employee does not return to work within five working days after the cessation of the suspension of the employment contract,
- if during absence from work due to an illness or injury an employee does not follow the instructions of the competent doctor or carries out gainful work during this time or leaves his/her residence without the approval by the competent doctor and/or medical commission.

A summary dismissal is permitted if, by taking into account all circumstances and interests of both contractual parties, *it is not possible to continue the employment relationship until the expiration of the period of notice or until the expiration of the period for which the employment contract was concluded*.

In case of a summary dismissal shorter *time limits* have to be observed. In order for a dismissal to be valid the employer has to dismiss an employee no later than within 15 days as from getting acquainted with the reasons justifying a summary dismissal and no later than six months as from the occurrence of this reason. If the reason for a summary dismissal has all characteristics of a criminal offence, the employer may dismiss the employee during the entire period in which an employee may be a subject to criminal prosecution within 15 days as from having found out about the violation and the offender.

In cases the reason for a summary dismissal is one of the first three of the above mentioned reasons, the employer may *prohibit the employee to carry out work* during the entire procedure of a summary dismissal. In such a case the employee is entitled to the wage compensation amounting to half of his average wage.

6.3.2. Procedural requirements

Prior to the ordinary dismissal for the reason of misconduct, the employer must, by a written statement, give a *warning* to the employee, i.e. call the employee's attention to the fulfilment of obligations and to the possibility of a dismissal in the case of repeating the violation.

Prior to the ordinary dismissal for the reason of misconduct and prior to the summary dismissal as well, the employer must provide the employee an *opportunity to defend him or herself*. The employee has a right to be heard and to express his or her views. Rules on disciplinary procedure apply *mutatis mutandis.* There are few exceptions. An employer is free

from that obligation if, due to the existing circumstances, it would be unjustified to expect from him or her to provide an employee an opportunity to defend, or if the employee explicitly rejects it or does not, without a justified reason, respond to the invitation of the employer.

Prior to a dismissal (ordinary or summary dismissal), the employer must – on employee's request – *inform in writing the trade-union* of the employee concerned about the intended dismissal. The trade union may *give its opinion* about the intended dismissal within eight days. It may *oppose the dismissal* only, if it considers that there are no valid reasons for a dismissal or that the procedure was not implemented in accordance with the law.

Certain additional requirements must be observed prior to a dismissal, if an employer wishes to dismiss an employee who is entitled to a *special protection against dismissal*, for instance, in the case of dismissal of a trade-union representative, the consent of the trade-union is necessary, etc. (See above 3.4.)

A letter of dismissal has to be *in writing*. The employer has to *state the reason* for the dismissal, *explain* it in writing as well as inform the employee about the legal remedies and her or his unemployment insurance rights. The letter of dismissal has to be delivered to the employee personally, if this is not possible civil law rules apply.

6.3.3. Effects of the dismissal

In the case of an ordinary dismissal the employment relationship is terminated by the expiry of the period of notice. In the case of a summary dismissal the employment relationship comes to an end immediately.

In the case of an ordinary dismissal for reason of misconduct as well as in the case of a summary dismissal for grave misconduct the employee is *not entitled to a severance payment* or any other compensation for the termination of employment relationship.

Employees who are dismissed on 'disciplinary' grounds are *not entitled to unemployment benefit* either.

There is no special effect to the pension and health insurance (see above 5.3.).

6.3.4. Remedies

If an employee believes that there is no valid reason for ordinary dismissal or no reason justifying a summary dismissal or that certain procedural requirement were not fulfilled properly by the employer, he or she may *pursue a lawsuit* claiming a dismissal to be illegal and invalid. An employee may bring an action before the competent labour court *within 30 days* from the day of the delivery of a dismissal. Trade unions may represent their members before the court only with the authorisation of the member concerned. Usually, they offer their members free legal assistance. According to the Free Legal Aid Act, the state legal aid system is available for persons with low income. In disputes concerning the termination of employment the court has to act rapidly. Nevertheless, such cases are pending before labour courts for quite a long time.

If an employee's action is successful, the court orders a *reinstatement* of the employee and *payment of wages* he or she would have earned had not been illegal termination of employment. *Burden of proof* for the existence of a valid reason for a dismissal rests within the employer.

6.3.5. Suspension of the effects of the dismissal

The employee who brings an action before the court may at the same time request the labour court for *an order of interim relief*, which requires the employer to continue the employment relationship with the dismissed employee or to reinstate the employee until the court reaches the decision on the matter. In practice, labour courts issue such an order very rarely. Usually, the employment of the dismissed employee is not kept during the judicial procedure.

The labour legislation provides for a possibility to suspend the effects of the dismissal during the time until the court reaches a decision on the issuing of an order of interim relief. A suspension of the effects of the dismissal is possible in the case of an ordinary dismissal for reasons of incapacity and for reasons of misconduct and in the case of a summary dismissal of an employee. The following *conditions* have to be fulfilled:
- there had to be the *employee's request* to suspend the effect of a dismissal,
- trade-union which was (on the employee's request) informed about the intended dismissal had to *oppose* to the dismissal by a written statement.

That means that a suspension of the effects of the dismissal according to the ERA is possible *only, if the employee is a trade-union member*, if the employee requests that trade-union must be informed about the intended dismissal and if the trade-union, after having been informed, expresses its opinion and opposes to the dismissal in writing within eight days from the day it was informed.

6.3.6. Restoration of employment

The reinstatement of an employee is a rule in cases of a successful lawsuit before the labour court, if the dismissal was found to be void. The employment relationship is considered not to be broken and the employer has to reinstate the dismissed employee. If a suspension of the effects of the dismissal and an interim relief took place, the employment relationship is considered to not have been broken at all and continues further.

There is *no reinstatement* of the employee, although the dismissal is found to be void, if the *court establishes that the continuation of the employment relationship would no longer be possible*. In this case the court decides that the employment relationship existed until the first instance judgement and determines the date of the termination of employment relationship. The court may reach such a decision upon employee's request or without it. This constitutes a special mode of termination of employment called termination on the basis of a court judgement (see above 5.1.).

6.3.7. Penalties

According to the penal provisions of the ERA, an employer may *be fined for the offence,* if he violates certain substantial or procedural requirements in relation to the dismissal.

A fine of not less than 1,000,000 SIT (around 4000 EUR) may be imposed on the employer if he or she:
- did not inform the trade union in writing on the intended dismissal,
- did not hand a written letter of dismissal to the employee,
- did not follow the prescribed procedure prior to the dismissal,
- did not respect the time limits for a valid dismissal,
- violated the rights to special protection against dismissal of an employees' representative, an older worker, a pregnant worker, a worker with family responsibilities, a disabled worker.

Certain acts or omissions by the employer seriously violating the rights of employees are punishable as a criminal offence according to the Penal Code; in practice, these provisions of the Penal Code are used very rarely.

6.3.8. Collective agreements

Usually, collective agreements do not include provisions on this matter. In some cases they determine more precisely the procedure prior to the dismissal.

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

In Slovenia, the law makes a distinction between a dismissal for reason of misconduct, the reason of incapacity and the economic reason. Many provisions are the same for all kinds or for at least two kinds of dismissals.

6.4.1. Substantive conditions

In Slovenia, this kind of a dismissal is covered by *a dismissal for reason of incapacity*. Article 88 of the ERA defines the reason of incapacity as follows: »…non-achievement of expected work results because the employee failed to carry out the work in due time, professionally and with due quality, or non-fulfilment of conditions for carrying out work stipulated by laws and other regulations due to which the employee fails to fulfil or cannot fulfil the obligations arising from the employment relationship«.

The employer may dismiss an employee if he or she presents *a valid reason* connected with incapacity of the employee and respects *a period of notice*. A dismissal for reason of incapacity is an 'ordinary' dismissal, which requires a period of notice.

An employer may dismiss an employee only, if reasons justifying the dismissal are serious and substantiated and make the continuation of the employment relationship between the employee and the employer impossible. This provision of Article 88 of the ERA is in fact *the 'ultima ratio' rule*, which applies also in case of a dismissal for reason of incapacity.

The 'ultima ratio' rule is supported by a provision according to which an employer must, prior to the dismissal, *check whether there are alternatives to the dismissal*, i.e. whether it is possible to find another work/post for the employee. This obligation of the employer exists only if the employee has been employed by the employer for more that six months. Additionally, this substantive requirement does not apply to smaller employers (employing ten or less workers). The employer has to check whether it is possible for the employee to

work under changed conditions or on another post, and/or whether it is possible to additionally train the employee for the work he carries out or to retrain the worker. If such possibility exists, the employer *has to offer the employee a new (changed) contract of employment*. If in such a case the employer does not offer a new (changed) contract although this would be possible, a valid reason for a dismissal is considered not to exist and consequently a dismissal is not justified. If the employee refuses an offer, made by the employer, the employment relationship terminates. If the employee refuses an offer, which guaranties him or her employment for appropriate work under an open-ended contract, she or he loses the right to a severance payment.

An employer must also observe the *time limits* for a dismissal. An employer may dismiss an employee no later than within 30 days as from having found out the reasons justifying a dismissal and no later than within six months as from the occurrence of that reason. After this lime limits the particular ground *can no longer be considered as a valid reason and can not justify a dismissal any more.* If the employer did not react promptly, that means that he or she did not consider the relevant facts related to the incapacity of the employee concerned so important that a further relationship with that employee be impossible.

According to the ERA the *minimum period of notice* in cases of a dismissal on grounds of incapacity depends on the length of the employee's service with the employer:
- 30 days, if the length of service with the employer is less than five years,
- 45 days, if the length of service with the employer is at least five years,
- 60 days, if the length of service with the employer is at least 15 years,
- 120 days, if the length of service with the employer is at least 25 years.

Longer periods of notice may be determined by collective agreements or by an individual contract of employment. For a smaller employer (employing ten or less employees) a branch collective agreement may determine an even shorter period of notice. Compensation instead of period of notice may be agreed upon by a written agreement.

During the period of notice an employee is entitled to *paid absence from work* in order to find a new employment, for a minimum of two hours per week. Collective agreements may provide for longer periods of paid absence from work during the period of notice.

6.4.2. Procedural requirements

Prior to the ordinary dismissal for the reason of incapacity, the employer has to provide the worker an *opportunity to defend himself/herself*. Rules on disciplinary procedure apply *mutatis mutandis.* There are few exceptions. An employer is free from that obligation if, due to the existing circumstances, it would be unjustified to expect from him or her to provide an opportunity for the employee to defend him or herself, or if the employee explicitly rejects it or does not, without a justified reason, respond to the invitation of the employer.

Prior to a dismissal, the employer must – on the employee's request – *inform in writing the employee's trade-union* about the intended dismissal. The trade union may give *its opinion* about the intended dismissal within eight days. It may *oppose* the dismissal only if it considers that there are no valid reasons for a dismissal or that the procedure was not implemented in accordance with the law.

Certain additional requirements have to be observed prior to a dismissal, if an employer wishes to dismiss an employee who is entitled to a *special protection against dismissal*, for

instance in the case of a dismissal of trade-union representative a consent of the trade-union is necessary, etc. (see above 3.4.)

The notification of a dismissal has to be *in writing*. The employer must state the reason for a dismissal, explain it in writing as well as inform an employee about the legal remedies and his unemployment insurance rights. The letter of a dismissal has to be handed to an employee personally; if this is not possible, civil-law rules apply.

6.4.3. Effects of the dismissal

The employment relationship is terminated by the expiry of the period of notice.

A dismissed employee is entitled to *a severance payment*. A minimum severance payment is determined by the ERA. Higher amounts of the severance payment are provided by collective agreements and in certain cases (more or less only for the managerial and leading staff) also by individual contracts of employment.

The *minimum amount* of the severance payment according to the ERA is:
- 1/5 of the monthly wage for each year of employment with the employer (including the employer's predecessors), if the worker has been employed with the employer for more than one and up to five years;
- 1/4 of the monthly wage for each year of employment with the employer, if the worker has been employed with the employer for the period from five to fifteen years;
- 1/3 of the monthly wage for each year of employment with the employer, if the worker has been employed with the employer for the period exceeding fifteen years.

The law limits the severance payment to the amount of ten monthly wages of the employee, unless otherwise stipulated by the branch collective agreement.

Employees who are dismissed for reasons of incapacity are entitled to the *unemployment benefit* as well. Conditions are prescribed by the law regulating the unemployment insurance.

There is no special effect to the pension and health insurance (see 5.3.).

6.4.4. Remedies

The same rules apply as in the case of a dismissal for the reasons of misconduct. See above 6.3.4.

6.4.5. Suspension of the effects of the dismissal

The same rules apply as in the case of a dismissal for reason of misconduct. See above 6.3.5.

6.4.6. Restoration of employment

The same rules apply as in the case of a dismissal for reason of misconduct. See above 6.3.6.

6.4.7. Penalties

The same rules apply as in the case of a dismissal for reason of misconduct. See above 6.3.7.

6.4.8. Collective agreements

Usually, collective agreements do not include many provisions on this matter. Some collective agreements regulate more precisely the procedure prior to the dismissal to be followed by the employer. They may also determine longer periods of notice and higher amounts of severance payments.

6.5. Dismissal for economic reasons

In Slovenia the law makes a distinction between a dismissal for the reason of misconduct, the reason of incapacity and the economic reason. Many provisions are the same for all kinds or for at least two kinds of dismissals.

The ERA speaks of the 'business' reason instead. In the study a term 'economic reason' is used.

6.5.1. Substantive conditions

The employer may dismiss an employee, if he or she demonstrates the existence of *a valid reason* and if he gives *the period of notice*. A dismissal for economic reason is an 'ordinary' dismissal, which requires a period of notice.

Article 88 of the ERA defines the economic reason as follows: »…cessation of the needs to carry out certain work, under the conditions pursuant to the contract of employment, due to economic, organisational, technological, structural or similar reasons on the employer’s side«.

The substantive requirements are mainly the same as in the case of a dismissal for reason of incapacity. See above under 6.4.1. for:
- the *'ultima ratio' rule,*
- the obligation to check whether there are *alternatives to a dismissal*,
- the *time limits* for a dismissal.

According to the ERA, the *minimum period of notice* in cases of a dismissal for economic reasons depends on the length of employee's service with the employer:
- 30 days, if the length of service with the employer is less than five years,
- 45 days, if the length of service with the employer is at least five years,
- 75 days, if the length of service with the employer is at least 15 years,
- 150 days, if the length of service with the employer is at least 25 years.

Longer periods of notice may be determined by collective agreements or by an individual contract of employment. For a smaller employer (employing ten or less employees) a branch collective agreement may determine even shorter period of notice. *Compensation* instead of the period of notice may be agreed upon by a written agreement.

During the period of notice an employee is entitled to *paid absence from work* in order to find a new employment, for a minimum of two hours per week.

6.5.2. Procedural requirements

In addition to general rules for the individual dismissal for economic reasons, specific procedural rules apply in case of collective redundancies. See below under 6.5.3.

The procedural requirements for the individual dismissal on economic grounds are mainly the same as in the case of a dismissal for reason of incapacity.

The employer has to *inform the employee* about the intended dismissal for economic reasons in writing. But there is no need for the right to defence, which is guaranteed in the case of a dismissal for the reason of incapacity.

See above under 6.4.1. for rules concerning the following issues:
- informing the trade-union of the employee about the intended dismissal,
- additional special requirements for the dismissal of certain categories of workers, for instance employees' representatives,
- the form and content of the letter of dismissal.

6.5.3. Specific requirements for collective dismissals

The solutions in the ERA regarding collective dismissals follow the requirements prescribed by the EC Directive 98/59/EC on collective dismissals and by the ILO Convention No. 158 and Article 29 of the Revised European Social Charter

In the special chapter of the ERA (Articles 96-102), firstly, *a definition* of the term ‘a larger number of employees’ is contained, and by that the scope of the special rules on collective dismissals is determined. Then, additional obligations of the employer, respectively additional rights of the employees are prescribed:
- the employer has to prepare the *social plan* for redundant employees,
- the employer has to *inform the trade-unions* at the employer and *consult* with them,
- the employer has to inform the *Employment Service* and take into account its potential proposals,
- the employer has to follow the *criteria for the selection* of the redundant employees,
- the dismissed employees have a *preferential right to employment*.

Considering the definition of the term ‘a larger number of the employees’, special regulation for collective dismissals applies only to the employers who employ 20 or more workers.

The special regulation on collective dismissals applies if:
(a) within the period of 30 days the following number of employees becomes redundant:
- at least 10 employees, in case the employer employs more than 20 and less than 100 employees,
- at least 10 % of employees, in case the employer employs at least 100 and less than 300 employees,
- at least 30 employees, in case the employer employs 300 or more employees;
(b) within the period of three months, 20 or more employees become redundant.

The employer has to prepare ***a social plan*** which has to comprise the following:
- the reasons for the redundancies;
- measures for preventing or limiting to the highest possible degree the termination of employment relationships, whereby the employer must check the possibility of continuing the employment under modified conditions;
- the list of redundant employees;

- the measures and criteria for the selection of measures to mitigate harmful consequences of the termination of employment relationship, such as: employment with another employer, payment of benefits, assistance for starting a business, purchase of insurance period.

The employer has to inform ***the trade unions*** about:
- the reasons for the redundancies,
- the number and the categories of all workers employed with the employer,
- the envisaged categories of redundant employees,
- the envisaged term in which the need for the employees is expected to cease, and
- the proposed criteria for the selection of redundant employees.

With the intention of working out an agreement, the employer must consult with the trade unions about the proposed criteria for the selection of redundant workers, and about the content of the social plan (measures for avoiding and limiting the number of dismissed workers and for the prevention and mitigation of harmful consequences). The employer has to send a copy of the documents for the trade-unions also to the Employment Service.

The employer has to inform ***the Employment Service*** in writing about the collective dismissals for economic reasons. He or she has to inform the Employment Service about the consultation procedure with trade-unions, about the reasons for redundancies, about the number and categories of all employees, about the envisaged categories of redundant employees and about the envisaged term in which the need for the employees is expected to cease. A copy of the documents for the Employment Service has to be sent to the trade unions.

The employer may not dismiss redundant employees prior to the expiration of 30 days as from the informing the trade-unions and the Employment Service. In exceptional cases this period of time may be prolonged to 60 days, upon the request by the Employment Service.

According to the ERA, particularly the following ***criteria*** have to be taken into account, when selecting redundant workers:
- the employee's professional education and/or qualification for work and the required additional skills and capacities,
- working experience,
- job performance,
- years of service,
- health condition,
- the employee's social condition,
- parenthood of three or more minor children or the status of a sole bread-winner in the family with minor children.

Under the same criteria, the priority has to be given to the preservation of jobs by those employees who are in a worse social situation. Temporary absence from work due to an illness or injury, the care for a family member or for a severely handicapped person, parental leave or due to pregnancy may not be a criterion for the determination of redundant employees.

The dismissed employees have a special *preferential right to employment*. If the employer employs new employees within the term of one year, the dismissed redundant employees enjoy preferential right to employment, if they fulfil the conditions for carrying out the work.

6.5.4. Effects of the dismissal

The same rules apply as in the case of a dismissal for reason of incapacity (see above 6.4.3.).

6.5.5. Remedies

The same rules apply as in the case of a dismissal for reason of misconduct and for reason of incapacity (See above 6.3.4).

6.5.6. Suspension of the effects of the dismissal

In the case of a dismissal for economic reasons, the rules of the ERA on the suspension of the effects of the dismissal do *not* apply.

6.5.7. Restoration of employment

The same rules apply as in the case of a dismissal for reason of misconduct and for reason of incapacity (See above under 6.3.6.).

6.5.8. Administrative or criminal penalties

The same rules apply as in the case of a dismissal for reason of misconduct and for reason of incapacity (See above under 6.3.7.).

Additionally, a fine of not less than 1,000,000 SIT (around 4000 EUR) may be imposed on the employer if he did not carry out the procedure of collective dismissals for economic reasons in accordance with the law.

6.5.9. Collective agreements

Many collective agreements comprise provisions on dismissals for economic reasons, especially on collective redundancies. Usually, they *regulate more precisely* the criteria for determining redundant employees, the procedure to be followed by the employer in this case, including the obligations in connection to informing the trade-unions, the content of a social plan in case of redundancy, severance payments, periods of notice and also a preferential right to employment and similar issues.

Some collective agreements provide for a *special protection against dismissal* for certain categories of workers additionally to the legislation (for example employees with small children, if both spouses are redundant at the same employer, etc.).

6.5.10. Special arrangements

6.5.10.1. Insolvency

In case of insolvency of the employer the rules on redundancies apply, however, there are some special provisions. The period of notice is shorter and amounts to 15 days only in case of bankruptcy or to 30 days only in case of compulsory composition; a period of notice is the same for all employees, irrespective of their length of service at the employer. The role of

trade-unions and the Employment Service is in general the same as in the case of 'ordinary' collective dismissals. The dismissed employees have a right to a severance payment and a preferential right to employment as well.

Compared to the previous regulation, there has been a major change in regulation of termination of employment in cases of insolvency. Before the ERA (2002) all employment relationships were terminated by operation of law upon the opening of a bankruptcy procedure. Employees had no right to a severance payment and no right to a period of notice. There was no special protection of particular categories of workers; there were no obligations in relation to trade-unions and the Employment Service. Also in the case of compulsory composition no period of notice was guaranteed, severance payments were denied. Previous regulation was criticised by the labour law experts as inappropriate, unconstitutional and also not in conformity with the international norms, i.e. the ILO Convention No. 158 and Revised European Social Charter. It was successfully challenged before the Constitutional Court for several times as well. The new regulation of the matter, in general, follows the suggestions from the critiques, although some questions still remain open.

6.5.10.2. Transfer of the firm

The transfer of an undertaking *does not affect the existing employment relationships* which continue to exist with the new employer – transferee. The core principle of the relevant EC Directive applies: rights and obligations of the employment contract as well as the sole employment relationship are transferred to the new owner – transferee.

The rights and obligations under the collective agreement which applied to the transferor are guaranteed to the transferred employees for at least one year, unless the collective agreement terminates prior to the expiration of one year or unless prior to the expiration of one year a new collective agreement is concluded.

If the worker refuses the transfer and the actual carrying out of work with the transferee, the *transferor may dismiss the employee without a period of notice* (summary dismissal). If the new owner intends to reduce the number of employees for economic reasons, she or he has to follow the general rules on the *dismissal for economic reasons*.

If after the transfer the rights of an employee deteriorate considerably, *the employee may resign and safeguard the same rights* as if he or she be dismissed by the employer for economic reasons.

P*eriods of service with the transferor are safeguarded* when determining the length of service of the employee which is relevant for acquiring of certain rights (for example, a severance payment or a period of notice depends on the length of service). The period of service of the employee with both employers is taken into account.

In the case of a transfer trade unions at the employer have to *be informed and consulted* about the date of the transfer, the reasons for the transfer, the legal, economic and social implications of the transfer for employees, the measures envisaged in relation to the employees. If there is no trade-union at the employer, the employer has to inform and consult the employees directly.

7. Resignation by the employee

7.1. Substantive conditions

An employee who wishes to terminate an employment relationship has two possibilities:
- *'ordinary' resignation* – an employee may terminate the employment contract with a period of notice at any time without presenting any reasons for the resignation;
- in certain exceptional cases, if there is a serious ground, *the summary ('extraordinary') resignation* by the employee is possible (without a period of notice).

The resignation of an employee has to be in accordance with his or her free will. The resignation submitted due to a threat or fraud on the side of the employer or due to an error by the employee is void.

In the case of an 'ordinary' resignation by the employee, a minimum *period of notice* according to the ERA is 30 days. The contract of employment or the collective agreement may provide for a longer period of notice, yet it may not exceed 150 days. Compensation instead of the period of notice may be agreed upon by a written agreement.

A summary resignation is possible in exceptional cases of grave violations of the employee's rights by the employer. The ERA lays down the following *reasons* justifying a summary resignation:
- the employer failed to assure work to the employee for more than two months and also failed to pay him or her the legally stipulated wage compensation,
- the competent inspection prohibited the work process or the use of the employer's premises for longer than 30 days, and the employer failed to pay the employee the legally stipulated wage compensation for that time period,
- for at least two months, the employer paid the employee a substantially lower remuneration than obliged to,
- three times successively or within the period of six months, the employer failed to pay the employee the remuneration he or she is entitled to,
- the employer failed to assure occupational health and safety measures at work, although an employee previously requested from the employer to eliminate the immediate and unavoidable danger threatening life and health,
- the employer offended her or him or behaved violently towards her or him or if the employer despite the employee's warnings failed to prevent such treatment by other employees,
- the employer failed to assure the employee equal treatment,
- the employer failed to assure protection against sexual harassment.

A summary dismissal is permitted only *if, by taking into account all circumstances and interests of both contractual parties, it is not possible to continue the employment relationship until* the expiration of the period of notice or until the expiration of the period for which the employment contract was concluded.

7.2. Desertion of the post

There are no explicit statutory provisions on the matter. However, for the resignation to be effective a written statement of the employee is required. The employee’s will to resign has to be expressed explicitly and not just by the concluding action. Therefore, a desertion of the post may be considered *as a breach of contract at the employee’s side*. It may not be deemed

that a tacit resignation has occurred. In this case an employer may proceed according to the rules on dismissals for the reason of misconduct (ordinary and also summary dismissal is possible according to the law, provided that all other prescribed requirements are fulfilled).

7.3. Procedural requirements

The letter of resignation has to be *in writing*. It has to be handed to the employer according to the rules of civil procedure (personally, as a rule).

Special requirements regarding the *time limits* are prescribed for the summary resignation. An employee has to resign no later than within 15 days as from getting acquainted with the reasons justifying the summary resignation and no later than six months as from the occurrence of this reason. Additionally, prior to the resignation, an employee has to remind the employer of the fulfilment of obligations and inform the labour inspector about the violations. The reminding of the employer and the information for the labour inspector has to be in writing. After reminding the employer and informing the inspector, the employee has to deliver a summary resignation within eight days in order to be effective.

7.4. Effects of the resignation

In the case of an 'ordinary' resignation the employment relationship is terminated after the expiry of the period of notice; in the case of a summary dismissal an employment relationship is terminated immediately.

According to the general rules, an employee who resigns does *not* have the right to a *severance payment* or any similar payments. Nor do collective agreements provide for such payments.

There are certain exceptions to this rule, in which cases an employee who resigns *is entitled to a severance payment*:
- if an employee resigns in order *to retire*, he or she is entitled to a severance payment in case of retirement, which is regulated by Article 132 of the ERA and in the most collective agreements as well,
- if in the case of a *transfer*, the rights of an employee deteriorate considerably, the employee may terminate the employment contract, safeguarding at the same time the rights as if he or she be dismissed by the employer for economic reasons, thus including the right to a severance payment;
- in the case of a *summary resignation,* an employee in entitled to a severance payment and, additionally, to the compensation amounting to no less than the level of the lost remuneration during the period of notice.

A severance payment in cases mentioned above under second and third line is calculated in the same manner as in the case of a dismissal for economic reasons or for the reason of incapacity (see above 6.4.3.).

Severance payment in case of retirement according to Article 132 of the ERA amounts to two average monthly salaries in Slovenia or to two average monthly salaries of the employee, if this is more favourable to the employee. If an employee fulfils the conditions for both severance payments, he or she is entitled just to one of it, whichever is higher.

The employee who resigns (ordinary resignation) is *not* entitled to *an unemployment benefit*. In the case of a summary resignation, an employee *is entitled* to an unemployment benefit if all other conditions are fulfilled in accordance with the law regulating unemployment insurance.

There is no special effect to the pension and health insurance (see 5.3.).

7.5. Remedies

The employer may pursue an action before the labour court, if an employee does not resign in accordance with the relevant legal rules (but in general, an employee is free to resign, there are not many legal rules on resignation, he just has to respect a period of notice). The employer may *claim damages for a breach of contract, if the employee does not respect a period of notice*.

In case of *a summary resignation the burden of proof regarding the existence of an important reason justifying the summary resignation rests on the employee*. If a summary resignation is not justified and is not in accordance with the law, the employee has to pay compensation for damages to the employer according to the general civil law rules.

7.6. Compensation to the employer

There are no special provisions in the labour legislation, which would grant an employer the right to certain compensation in the case if an employee resigns. For compensation due to breaches of obligations of the employee in the course of resignation see above 7.5.

7.7. 'Contrived' resignation

In practice, there are so called *'bianco' resignations,* where an employer requests from job-seekers, the future employees, to sign an empty letter of resignation in order to make it possible for the employer to fill in a date when he wishes to dismiss an employee. Formally, a resignation by an employee took place, but the termination of employment relationship was in fact a consequence only of the will of the employer, therefore a concealed dismissal. Similar problems occur in connection with the mutual agreement (see above under 4.1.).

The case-law is relevant in this regard. In one of its judgements the labour court said that such agreement is void. There was no real and free will of the employee. In this case the termination of employment was in fact solely a consequence of the employer's will. An employee can not waive her or his rights in connection with the termination of employment. This was in fact a concealed dismissal and therefore rules on dismissal should be respected.

7.8. Resignation for proper cause

See above, especially under 7.1., 7.3., 7.4., 7.5., about a summary resignation. If there is a proper cause justifying a summary resignation, an employee:
- may resign *without a period of notice*,
- has the right to a *severance payment*,
- has the right to a *compensation* for the lost period of notice,
- is entitled to an *unemployment benefit*.

7.9. Collective agreements

Collective agreements often determine periods of notice. Provisions on severance payments in case of retirement are often included in the collective agreements as well: if an employee resigns in order to retire, he or she is entitled to a severance payment.

8. General questions relating to all forms of termination of employment relationships

8.1. Non-competition agreements

An employee and an employer may stipulate in the employment contract the prohibition of competition after the termination of the employment relationship. A non-competition agreement is regarded as *a special clause in the employment contract*.

It is only valid under certain *conditions*, prescribed by the law:
- the work of an employee is of such a nature that an employee *gains technical, production or business knowledge and business links*,
- a non-competition clause has to be *in writing*,
- an employment relationship has been *terminated at the employee's will or through her or his fault,*
- a non-competition agreement may be agreed for a period *not longer than two years* after the termination of employment relationship,
- the prohibition of competition has to be *within the reasonable limits of time*;
- it may *not exclude the possibility of appropriate employment* for the employee,
- an *adequate compensation* for the whole period of non-competition agreement has to be stipulated in the employment contract, if the non-competition agreement prevents the employee from gaining earnings comparable to her or his previous wage (according to the ERA a minimum amount is at least a third of the average monthly wage of the employee).

A question of the validity of a non-competition agreement was raised before the Constitutional Court in the beginning of the 1990's. The Constitutional Court found the legal regulation on the matter from that time unconstitutional (Case No. U-I-51/90, Official Gazette of the Republic of Slovenia, No. 29/92). In the reasoning of the judgement it is said that, in general, a non-competition clause is not unconstitutional in itself, but in order to be valid, it must explicitly provide for an adequate compensation for the employee as well.

According to the ERA, a non-competition agreement may be *terminated prior to the expiry* of the period for which it was concluded, by a mutual agreement of the parties or by the employee's will as well, if he or she resigns due to the employer's grave breaches of contract of employment. In the second case the employee has to notify such decision in writing to her or his former employer within one month after the termination of employment relationship. According to the case law an employer alone can not waive the effects of the non-competition clause by declaring unilaterally that a former employee is released from the obligation not to compete with him or her; nevertheless, an employer has to pay the agreed compensation. Such interpretation of the relevant legal provisions is criticised by the experts.

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

There is no specific legislation on the matter. Therefore the case law is rather important in this regard. In practice, such agreements are rare, one exception being the *agreements, by which an employee whose training had been paid for by the employer agrees to pay compensation, if she or he resigns or is dismissed on grounds of misconduct before a specified date*. According to the case law of the labour courts, such agreements are valid and apply according to the general rules of contract law. An employee may not be forced to work, but he or she is

obliged to pay compensation in the case of premature termination of employment (usually in the amount of the sums expended by the employer on his or her professional training).

8.3. Issuing of a reference

The employer is obliged to, on the employee's request, return to the employee all his documents and also issue *a reference in respect of the type of work* done by the employee. In the reference an employer may not state anything which would impede the employee's future job prospects.

According to the Slovenian labour law, every employee has *an employment booklet* which is a public document, issued by the competent administrative unit. In the employment booklet the essential data for each employment relationship of the employee are registered, including the name of employer, dates of commencement and termination of employment, its duration and working hours. During the employment relationship the employment booklet is kept by the employer, but he must hand it over to the employee upon his request. After the termination of employment relationship, the employer is obliged to return the employment booklet to the employee without any delay and without any additional requests to the employee.

8.4. Full and final settlement

In Slovenia there are *no specific rules on the matter in the labour legislation*. General rules of contract law thus apply. Certain general principles of labour law have to be taken into consideration. For example, *an employee may not renounce her or his rights arising from the mandatory provisions of the laws and collective agreements*.

In practice, the conclusion of a full and final settlement in relation to the termination of employment relationship is not commonly used. There are still many open questions. The relevant case law is not settled and consolidated yet.

For example, labour courts have decided in several cases in the past that an employee may conclude an agreement with an employer renouncing his statutory right to a severance payment to which he or she would be entitled in the case of being dismissed for economic reasons. The Constitutional Court has, on the contrary, decided that a renouncement by the employee of his or her statutory rights to a severance payment has no effect, since the labour legislation provisions are mandatory and its application may not be dependant upon the will of the contracting parties. Such renouncement or agreement is void. By this decision (No. Up-63/03, 27 January 2005, Official Gazette of the Republic of Slovenia, No. 14/05) the Constitutional Court put an end to a rather doubtful case law of the labour courts on the matter.

Appendix: Legislation on a probationary period in Slovenia

A probationary period is regarded as a certain period at the beginning of an employment relationship. It is possible in the case of a contract of employment for indefinite period of time as well as in the case of a fixed-term contract of employment. In practice, it is usually used with the contract for indefinite period of time. A contract of employment with a probationary period is an ordinary contract of employment; an employee has the same rights and obligations as all other employees, only the regulation of the termination of employment is different.

A probationary period must be explicitly agreed upon by the parties to a contract of employment. Yet, the contracting parties are not absolutely free: the law limits the duration of a probationary period, so, it may not last longer than the first six months of employment and it may be extended only in the case of temporary absence of an employee from work. Many collective agreements determine the length of probationary periods more precisely for different types of work.

During probationary period, special rules for terminating employment relationships apply. Slovenian regulation on the matter is rather unique and very much different in comparison to the regulations in other European countries. In many countries, it is easier to dismiss an employee during the probationary period, whereas in Slovenia it is even more difficult to dismiss an employee during the probationary period.

An employer may not terminate an employment contract during a probationary period, except in the following cases:
- if there are reasons for a summary dismissal of an employee (grave misconduct of an employee and similar grounds), or
- in cases of bankruptcy, compulsory composition or liquidation of the employer.

An employer may dismiss an employee only upon the expiry of the probationary period, if an employee is not successful in carrying out his or her work and the employer is not satisfied with the employee. Many collective agreements regulate certain procedural requirements to be followed by an employer when assessing the employee's work during the probationary period and when deciding whether his or her work is satisfactory or not.

During the probationary period an employee is free to resign. He or she just has to respect the period of notice, which is shorter than according to the general rules (seven days, the same for all employees).

After the expiry of the probationary period, the ordinary rules on termination of employment relationships apply.

In practice, although usually not in accordance with the law, fixed-term contracts are often used instead of a probationary period to try and check the new employees. And only after being employed under the fixed-term contracts for certain time – which may be rather long in some cases in practice – an open-ended contract is offered to the employee, if the employer is satisfied with his or her work. In this case the employer does not have to follow the rather complicated rules on termination of employment during the probationary period. If the employer is not satisfied with the new employee, he or she just waits until the expiry of the fixed-term contract.