Termination of Employment Relationships

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European Commission

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SUMMARY

This synthesis report provides an overview of the legal situation as regards termination of employment relationships in the 12 new Member States of the European Union: 10 new Member States since 1 May 2004 (the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia and Cyprus) and two new Member States since 1 January 2007 (Romania and Bulgaria). It is an extension of the scope of the report »Termination of employment relationships: Legal situation in the Member States of the European Union«, which was first published by the Commission (DG for Employment and Social Affairs) in 1997 and updated in April 2006 and which covers the 15 Member States of the pre-enlargement European Union (EU-15). Together, these two synthesis reports give a comprehensive overview of the termination of employment relationships in the entire European Union, which enables comparison between the legal regulations of all Member States, showing their differences, but also similarities and common trends as well.

In all new Member States, the termination of employment relationship is not left entirely to the free will of the contracting parties; it is regulated by the labour legislation, which sets limits to the employer.

In all new Member States *the laws (statutes) are the most important legal source* for the termination of employment relationships. Some issues are dealt with also by the government regulations. Besides, there are collective agreements, internal company rules, work rules and an individual contract of employment. It is a common feature for nearly all new Member States that *collective bargaining is not very developed* and is concentrated mainly at the enterprise level. This is one of the major reasons for collective agreements not being very important source of law in the matter of termination of employment relationships. In the majority of new Member States the 'judge-made law' and the custom do not constitute a formal source of law. Nevertheless, the case-law of labour courts and/or of the Constitutional Courts is rather important for the interpretation of legal rules on the termination of employment. The custom is practically of no relevance.

In all new Member States different ways of terminating the employment relationship are regulated by labour legislation, but the majority of its provisions are dedicated to *a dismissal,* e.g. termination of employment relationship at the initiative of the employer. 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. There are differences between the Member States as regards how these valid reasons, justifying grounds for a dismissal are defined: in some new Member States the law exhaustively specifies numerous grounds in detail (which may then be grouped into more general types of reasons), whereas in others they are defined by using the general clause. Not in all new Member States the law distinguishes between disciplinary reasons, reasons related to employee's capacities or personal attributes and economic reasons.

A comparison of solutions of the same/similar factual situations in different Member States is sometimes difficult. For instance, reaching the retirement age or fulfilling the retirement conditions is in

certain cases a ground for *ex lege* termination of employment (exceptionally), in certain Member States this is a valid reason for a dismissal, in others it is a prohibited ground, which may never justify a dismissal, in certain Member States from that time on the employee is guaranteed less protection against dismissal, for example, employer may dismiss an employee without stating any reason justifying it (*ad nutum* dismissal), etc. In one Member State imprisonment may be a ground for *ex lege* termination of employment, in another a valid reason for a dismissal (depending on the length of imprisonment) and in a third one, under certain conditions, even a ground for a suspension of the employment contract, thus preventing an employment contract to come to an end. There are other such examples: health condition of the employee, death of the employer, insolvency of the employer, etc.).

Of course, in all new Member States the economic reason(s) (although in some cases differently denominated) is dealt with separately by labour legislation and the employees in all new Member States are given the highest level of rights in this case of termination of employment relationship. Besides, also collective dismissals have special rules to follow, which are rather similar in all new Member States, mostly due to the EC Directive on this matter.

Besides defining valid reasons by the general clause or by enumerating them more specifically, *certain grounds are explicitly prohibited by law* in all new Member States – they may never be valid reasons for a dismissal (for instance, trade union membership or activity, pregnancy, maternity leave, race, colour, sex, age, religion, social origin, etc.). See Tables 1(a), 1(b), 1(c).

There are *time limits*, too, which apply in certain cases or in relation to certain reasons for a dismissal (violations of employee's duties for example). The employer has to dismiss the employee for a particular reason within the set time limits, otherwise this reason cannot be used for justifying a dismissal later, after the expiry of the prescribed time limits.

There are differences as regards the '*ultima ratio*' rule between the new Member States. But in most of them, the law provides for measures aiming to prevent a dismissal if there are other possibilities for the continuing of the employment relationship. For example, in many new Member States, in case of a dismissal for economic reasons or for reasons related to (in)capacity or other personal attributes of the employee, 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/her under different circumstances. If so, the employer has to offer other suitable job to the employee. Besides, in many new Member States the employer has to warn the employee first and only if the violations repeat, the employer may dismiss the employee (unless the violations or breaches are serious enough to justify immediate termination of employment relationship, i.e. summary dismissal, or dismissal without prior warning).

The employer has to fulfil different *procedural requirements*, depending on the type of the reason of dismissal. There are certain differences between the Member States, yet, the formal/procedural requirements may include the following: for example, prior to a dismissal, the employer has to warn the employee, give her/him an opportunity to defend her/himself, 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, etc.. *In all new Member States, the dismissal requires a written form* (see Table 2); there are differences as regards the consequences of non-compliance to this rule (in some Member States the written form in prescribed *ad solemnitatem,* in the others just *ad probationem*).

In all new Member States, the labour legislation provides for *a special legal protection for certain categories of workers* in relation to the termination of employment relationship. But there are quite important differences as regards the categories of employees which enjoy special protection whereby (there are no differences for certain categories of employees, for instance pregnant employees) and as regards the extent of special protection against dismissal. Typical categories of employees who enjoy special protection include employees' representatives, pregnant women, workers with family responsibilities, workers with disabilities, older workers. The special protection may further provide for: prohibition of dismissal during a certain protected period; obligation of the employer to acquire prior consent of a particular body (e.g. labour inspectorate, trade union); prohibition of dismissal on particular grounds; only certain grounds for a dismissal may be used during the protected period; suspension of expiry of the period of notice during the protected period; etc.

There are major differences between the new Member States as regards the legal regulation on the *period of notice* (see Table 3). In all new Member States, as a rule, the employer has to observe a certain minimum period of notice. In some new Member States, the periods of notice are the same for the employers and for the employees, whereas in others the employer has to observe longer periods of notice than the employee wishing to resign. In most of the new Member States periods of notice depend on the length of service with the employer, yet not in all. In some new Member States there are different, usually shorter periods of notice for certain flexible types of employment contracts (e.g. fixed-term, part-time, etc.). It is interesting that in the majority of the new Member States the same rules on dismissals apply to open-ended as well as to fixed-term contracts of employment. In many new Member States the employee has the right to time-off during the period of notice, without loss of earnings, in order to seek for another job.

In all new Member States, the law also regulates the right to *a severance payment.* In all new Member States (except one) the employees dismissed for economic reasons have a right to a severance payment or another kind of compensation, whereas in case of disciplinary dismissal employees are not entitled to any payments. However, there are important differences as regards severance payments in the case of dismissal related to incapacity or personal attributes of the employee, yet, in the majority of the new Member States the employees have the right to severance payments in most of these cases, as well. There are differences between Member States as regards the conditions for entitlement to the severance payments or other compensations and as regards the amounts of payments. See Tables 5(a), 5(b), 5(c).

In nearly all new Member States, the employer may dismiss an employee immediately, without any period of notice, in exceptional cases, mainly connected with grave misconduct of an employee (summary dismissal). In some new Member States, a disciplinary dismissal is always a summary dismissal, without notice period and without any severance payments, but, on the other

side, a complex preliminary disciplinary procedure has to be followed in these cases.

In all new Member States, the rules regulating a dismissal *during the probationary period* are less strict. In most of the new Member States the employer may dismiss the employee during the probationary period without stating any reasons justifying a dismissal; there are also much shorter periods of notice or even none at all.

In all new Member States, there are additional special rules for *collective dismissals.* According to the Directive 98/59/EC, the following additional obligations have to be observed by the employer: information and consultation procedure with the employee's representatives (the trade union and/or the elected employees' representatives, such as the works council); notification to the public authority (such as the employment service). In different new Member States some other special rules apply (regarding a social plan, criteria for determining redundant employees, etc.). Usually, some special provisions apply also in the case of *insolvency* of the employer and in the case of *cessation* of the employer (there are important differences between the member States), but, in general, in most of the new Member States the rules on economic dismissals have to be followed. In the case of *transfer,* the employees are protected against dismissal; all employment relationships are transferred to the transferee.

In all new Member States, the employee is free to resign at any time, without presenting any reason, he/she just has to respect the period of notice. In certain exceptional cases, if there is a serious ground, *a summary (immediate) resignation* without a period of notice is possible.

If the employee thinks that she or he was unlawfully dismissed or her/his rights in connection with termination of employment were violated, the employee has the right to *a judicial remedy* in all new Member States. The employee may *bring an action before the court* or, in certain Member States, before another dispute resolution body. There are considerable differences regarding the time limits within which an action has to be brought before the court. There are also differences as regards the competent courts; in certain Member States there are specialised labour courts, whereas in the others, disputes over the termination of employment relationship are dealt with by ordinary civil courts of general jurisdiction. Only in few of the new Member States there is a possibility to *suspend the effect of the dismissal* until the end of the legal proceedings, but even there, it is rare in practice. In disputes over dismissals, *the burden of proof rests with the employer*; the employer has to prove that the dismissal was justified.

It is a common feature of nearly all new Member States that the main remedy in case of a successful lawsuit is *reintegration* of the employee (of course, at the employee's request) and the payment of the salary for the entire period of time from the illegal and thus ineffective dismissal forward. In some of the new Member States this general rule is amended with the possibility that when the continuation of relationship between the employer and the employee is not possible, the court may (at the employee's request or without it or at the employer's request) not order the reintegration but *compensation* instead.

There are rather important differences as regards the entitlement to *an unemployment benefit* after the termination of employment relationship. In all new Member States, the dismissed employees are entitled to an

unemployment benefit in case of a dismissal for economic reasons and in case of reasons related to incapacity or other personal attributes of the employee (for the latter case, there are waiting periods in certain Member States), according to the general rules governing this field of social security. However, employees dismissed for disciplinary reasons do not have the right to unemployment benefit in some of the new Member States, yet, in the majority of them, the eligibility for unemployment benefit does not depend on the reason for termination of employment nor on the employee's fault or willingness for termination of employment, thus, also in the case of disciplinary dismissal the unemployment benefit is granted.

The labour legislation in the new Member States covers the main types of the so-called *flexible workers*. Therefore the regulation of termination of employment relationships applies to them, as well. Fixed-term and fixed-task contracts, part-time workers, temporary workers are covered. Apprenticeship and home-workers are not covered in some new Member States. Yet, it is a common feature of all new Member States that *economically dependent workers are not covered*, neither in general nor partially, within the scope of labour legislation. Therefore the protective labour legislation on termination of employment relationships does not apply to them either.

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1. INTRODUCTION

The aim of this synthesis report is to provide a comprehensive overview of the legal situation as regards termination of employment relationships in the 12 new Member States of the European Union (EU).[1] Together with the report which covers the 15 Member States of the pre-enlargement EU,[2] it aims at enabling the comparison between the legal regulations, showing their differences, but also similarities and common trends.

The termination of employment relationship is one of the most important, but also conflicting issues of labour law and has drawn, from the beginnings, the attention of social partners. Nowadays, the importance of the issue is seen within the context of the debate on flexicurity. Legal regulation has to provide an adequate *equilibrium* between the need for security (protection) of employment and the need for flexibility, which is not always very easy.

In all new Member States (as well as 'the old' ones), the termination of employment relationship is not left entirely to the free will of the contracting parties; it is regulated by labour legislation which sets limits to the employer, thus ensuring protection for workers. It is a common characteristic of all new Member States that the employees enjoy the right not to be unfairly dismissed, i.e. not to be dismissed without a valid reason justifying a dismissal. This is considered as an international and European standard (ILO Convention No. 158 and Article 24 of the Revised European Social Charter). The importance of employees' representatives has been more and more emphasised; their role within the procedure of collective dismissals is regulated according to the principles of Directive 98/59/EC on collective redundancies. Other international standards have influenced the legal regulations of termination of employment in the given countries as well.

Most of the new Member States follow the continental legal tradition, whereas Cyprus and Malta are more under the influence of the common law tradition. All of the new Member States had to adjust their legislation due to the harmonisation process with the *acquis communautaire*. And most of them experienced the transition from a socialist to a capitalist market economy. Therefore, in many of the new Member States the legal regulation of termination of employment has been changed and amended many times during the last fifteen years. In many of the new Member States, also as a result of the above mentioned circumstances, labour law has been codified recently (Estonia and Hungary in the early 1990's, Latvia, Lithuania, Malta, Romania, Slovakia and Slovenia in the 2000's). In the new Member States, many solutions regarding the legal regulation of termination of employment are similar, many, though, also different.

The legal regulation of the termination of employment relationship is inevitably related

[1] This synthesis report covers: The 10 new Member States since 1 May 2004 (the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia and Cyprus) and the two new Member States since 1 January 2007 (Romania and Bulgaria).

[2] It was first published by the Commission in 1997 and updated in April 2006: "*Termination of Employment Relationships: Legal Situation in the Member States of the European Union",* European Commission – DG for Employment, Social Affairs and Equal Opportunities, Brussels, 2006 (http://ec.europa.eu/employment_social/labour_law/docs/termination_emp_relation_report_updated_en.pdf).

to the issue of flexible employment contracts, such as fixed-term and temporary contracts of employment and other contracts, whose extent is increasing in all new Member States (these issues are also shortly dealt with in this synthesis report).
One of the fundamental questions is whether and how labour law should be made open to contracts, which, on the one hand, are formally civil law contracts, but where, on the other hand, one party is essentially economically dependent and, consequently, in need of similar protection as an employee in relation to his or her employer. It is the common feature of all new Member States that in this regard nothing has been done; in none of the new Member States economically dependent workers are included, neither in general nor partially, within the scope of labour legislation.

Another issue is also the termination of employment relationships in the context of reorganisation of businesses – if and what special regulation of termination of employment is applied in the case of insolvency, bankruptcy, transfer, closure, etc. In most of the new Member States special emphasis is given to these issues; relevant EC directives influenced the legal regulations in this regard, introducing procedures and infrastructure for the protection of workers in such instances of economic restructuring.

One of the interesting issues in connection with the termination of employment relationships – especially in the context of today's debates on the ageing of population in Europe and its challenges – is the question what effect on the existing employment relationship (if any) does the fact have that the employee has reached a certain age, met the conditions for retirement, etc. There are important differences in the regulation of these issues between the new Member States; but, in quite in many of them, the reaching of a certain age, the fulfilment of retirement conditions, etc. does no longer result in *ex lege* termination of employment relationship and is no longer considered as a valid reason for a dismissal.

This synthesis report would not have been possible without national reports, which were the basis for it. They were prepared by the following national experts:

Vassil Mrachkov, Bulgaria
Christophoros Christophi, Cyprus
Zdeňka Gregorová, the Czech Republic
Merle Muda, Estonia
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Maris Vainovskis and Maris Logins, Latvia
Ipolitas Nekrošius and Tomas Davulis, Lithuania
Tonio Ellul, Malta
Andrej Swiatkowski, Poland
Luminița Dima, Romania
Helena Barancová, Slovakia
Barbara Kresal, Slovenia.

For the purpose of this report the following terminology is used:

- *Dismissal*: Termination of an employment relationship at the initiative of the employer;

- *Resignation*: Termination of an *employment* relationship at the initiative of the employee;

- *Summary dismissal/resignation*: *Dismissal*/resignation by the employer or employee respectively without period of notice;

- *Constructive dismissal*: Resignation because of the conduct of the employer.

2. SOURCES OF LAW

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

The right to work is guaranteed by the Constitution in **Bulgaria**, **Cyprus**, **the Czech Republic**, **Hungary**, **Malta**, **Romania** and **Slovakia**. In **Estonia, Latvia, Lithuania, Poland** and **Slovenia** the Constitution does not explicitly mention the right to work; rather the right to freely choose one's employment/profession is guaranteed by the Constitution. In certain new Member States, both rights are mentioned in the Constitution, e.g. **Hungary, Romania**.

In **Bulgaria**, termination of employment relationship forms a part of the constitutional norms on the protection of employment and on the right to work. According to Article 16 of the Constitution "labour is guaranteed and protected by law". Article 48(1) of the Constitution reads as follows: "Citizens are entitled to work. The State takes care of the creation of conditions for the exercise of this right."

In **Cyprus**, the right to work is acknowledged by Article 25 of the Constitution.

In **Estonia,** the Constitution guarantees the principle of free choice of profession in Article 29.

In **Hungary,** Article 70/B of the Constitution guarantees the right to work and the right to freely choose one's job and profession.

Article 106 of the **Latvian** Constitution states that "everyone has the right to freely choose their employment and workplace according to their abilities and qualifications". It does not explicitly guarantee the right to work.

In **Lithuania**, Article 48 (1) of the Constitution provides that every person may freely choose an occupation or business, and shall have the right to adequate, safe and healthy working conditions, adequate compensation for work, and social security in the event of unemployment.

In **Malta**, Article 7 of the Constitution guarantees the right to work. It is not recognised as a judicially enforceable right, but according to Article 21 as a "principle fundamental to the governance of the country".

In **Poland,** the freedom of choice of employment and profession is guaranteed by Article 65 of the Constitution.

The Constitution of **Romania** stipulates the right to work and the principle of protection of labour in Article 41. This provision guarantees the freedom of work, stating that "the right to work shall not be restricted and that everyone has a free choice of their profession, trade or occupation, as well as workplace".

In **Slovakia,** the right to work is acknowledged by Article 35 of the Constitution. Slovakia is also the only of the new Member States where the termination of employment relationships is explicitly mentioned in the Constitution; Article 36 lays down the right of workers to be protected against arbitrary dismissal.

In **Slovenia**, freedom of work is guaranteed by Article 49 of the Constitution and the

protection of work by Article 66. 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".

2.2. International agreements and conventions

The following ILO Conventions have been ratified[3]:

- *Convention No. 158* concerning Termination of Employment at the Initiative of the Employer, 1982 has been ratified by **Cyprus** (1985), **Latvia** (1994) and **Slovenia** (1992; bound by the convention since 1984 within the former Yugoslavia);
- *Convention No. 135* concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking, 1971 has been ratified by **Cyprus** (1996), the Czech **Republic** (2000), **Estonia** (1996), **Hungary** (1972), **Latvia** (1992), **Lithuania** (1994), **Malta** (1988), **Poland** (1977), **Romania** (1975), **Slovenia** (1992, bound by the convention since 1982 within the former Yugoslavia); the convention has *not* been ratified by **Bulgaria** and **Slovakia**;
- *Convention No. 145* concerning Continuity of Employment of Seafarers, 1976 has been ratified by **Hungary** (1978) and **Poland** (1979);
- *Convention No. 151* concerning Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service, 1978 has been ratified by **Cyprus** (1981), **Hungary** (1994), **Latvia** (1992) and **Poland** (1982).

[3] Source: ILOLEX (www.ilo.org/ilolex/english/, 10 February 2007).

Certain new Member States have ratified also many other ILO conventions, being partly relevant to the issue of termination of employment (for instance conventions on maternity protection, prohibition of discrimination in employment, etc.).

The European Social Charter of the Council of Europe:[4]

- *The revised European Social Charter, 1996* of the Council of Europe has been ratified by the following new Member States: **Bulgaria** (2000), **Cyprus** (2000), **Estonia** (2000), **Lithuania** (2001), **Malta** (2005), **Romania** (1999), **Slovenia** (1999).

They are all bound by Article 24 which provides for the right to protection in cases of termination of employment. All of the above mentioned new Member States, except **Cyprus**, are bound by Article 29 (the right to information and consultation in collective redundancy procedures) and by Article 4(4) which provides for the right to a reasonable period of notice for termination of employment as well. All above Member States are also bound by Article 8(2) which guarantees the women, during their pregnancy and maternity leave, the right to protection against dismissal and termination of employment. They are all bound by Article 1 on the right to work as well. It is interesting that Romania and Slovenia were, besides Sweden and France, among the first countries which ratified the revised Charter and thus enabling it to enter into force on 1 July 1999.

- The remaining new Member States are bound by the *original European Social Charter, 1961*: **the Czech Republic**

[4] Source: Council of Europe (http://www.coe.int/t/e/human_rights/esc/1_general_presentation/Signatures_Ratifications.pdf and http://www.coe.int/t/e/human_rights/esc/1_general_presentation/Provisions.pdf, 10 February 2007; situation on 15 June 2006).

(1999), **Hungary** (1999), **Latvia** (2002), **Poland** (1997), **Slovakia** (1998).

The Czech Republic, Poland and **Slovakia** are bound by Article 4(4), but not so **Hungary** and **Latvia**. All five Member States are bound by Article 8(2). They are all bound by Article 1 on the right to work as well (the Czech Republic not by its par. 4). It is interesting that all new Member States, except Latvia, have already signed the revised Charter as well (**the Czech Republic** in 2000, **Hungary** in 2004, **Poland** in 2005 and **Slovakia** in 1999), but they have not yet ratified it.

All of the new Member States are of course bound by the *acquis communautaire*, 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.).

2.3. Sources of law and their hierarchy

In all new Member States the laws (statutes) are the most important legal source for the termination of employment relationships. In some new Member States some issues are dealt with by the government regulations as well. Besides, there are collective agreements, internal company rules, work rules and an individual contract of employment.

In all new Member States there is a typical hierarchy between these legal sources. The provisions of the laws (statutes) are mandatory. A contract of employment as well as collective agreements may lay down rights which are more favourable for the worker than those provided for by the law. The same principle applies between an individual contract of employment and collective agreements (an individual contract may stipulate more favourable provisions to the employee than collective agreements, but not less favourable). In some new Member States there are certain provisions which do not allow any derogation at all (not even to the favour of an employee), in some new Member States there are few exceptions, where the law exceptionally allows a collective agreement to derogate even to the worse for an employee.

It is a common feature for nearly all new Member States that collective bargaining is not very developed and that collective bargaining is concentrated mainly at the enterprise level. This is one of the major reasons for collective agreements not being a very important source of law in the matter of termination of employment relationships. **Slovenia** is an exception, since collective bargaining is more centralised, the focus being at the industry-level bargaining, which is combined with the national-level tripartite social dialogue; consequently, collective agreements are a rather important legal source, too. In **Malta,** collective agreements are not considered to be a source of law.

It is interesting, that – in the absence of a well developed system of collective bargaining –employment legislation regulates employment relationships, including their termination, in detail. In many new Member States, labour law has been codified, either in the early 1990's (**Estonia, Hungary**) or in 2000's (for example **Latvia, Lithuania, Malta, Romania, Slovakia, Slovenia**). One important reason for that may also be the need to harmonize legislation with the acquis communautaire. Besides, there is a constant pressure to adapt labour legislation to the changing demands in the world of work also from potential foreign investors. It is interesting that the regulation of termination of employment within the labour legislation is rather comprehensive in nearly all new Member States, thus leaving little room for regulating this issue by collective agreements and individual contracts of employment.

Finally, it has to be pointed out, that in **Cyprus** and **Malta**, the legal systems and as part of them the regulation of termination of employment relationships, too, are influenced by the common-law tradition.

In **Bulgaria,** the law is the main legal source (Labour Code; OJ, Nos. 26 and 27 of 1986, amended; effective since 1 January 1987; and some others). Civil servants are not covered by the employment legislation; their relationships and their termination are regulated in the respective administrative laws, such as the Civil Servant Act (OJ, No. 67 of 1999, am.) and others. The Labour Code contains essential substantive and procedural provisions regarding the termination of employment relationships. In principle, it consists of imperative legal norms. Therefore collective agreements are not very important in this field. Likewise, also an individual contract of employment may settle only limited matters (e.g. term of notice).

In **Cyprus**, too, termination of employment is primarily regulated by the law. The most important is the Termination of Employment Act (No. 24/67 as amended), which provides a statutory right not to be unfairly dismissed. Different other laws are also relevant in some points, for instance: The Transfer of Undertakings Act (No. 104(I)/2000), the Collective Dismissals Act (No. 28(I)/2001), the Protection of Maternity Act (No. 100(1) of 1997), etc. In addition to these statutory rights, there is a remedy against wrongful dismissal under the common law and ordinary contractual principles. Judge made law has been very important in the development of labour law. Being an ex-colony, Cyprus follows the common law tradition of England and there has been influence by decisions of English courts.

The main legal sources in **the Czech Republic** are the respective laws. The general rules are contained in the Labour Code (Act No. 65/1965 coll., as amended), there are many other laws for different groups of workers. Since the legal regulation of termination of employment in the Labour Code and other laws is of mandatory nature, there is no space for the regulation by collective agreements (the only exceptions are redundancy payments).

Similarly, in **Estonia** the termination of employment relationships is regulated mainly and in detail by the laws (the most important are: the Republic of Estonia Employment Contracts Act, *"Eesti Vabariigi töölepingu seadus*" – RT 1992, 15/16; 2006, 10, 64; the Employee Disciplinary Punishment Act, *"Töötajate distsiplinaarvastutuse seadus"* – RT I 1993, 26, 441; 2000, 102, 674; the Unemployment Insurance Act, *"Töötuskindlustuse seadus"* – RT I 2001, 59, 359; 2005, 57, 451; the Individual Labour

Dispute Resolution Act, *"Individuaalse töövaidluse lahendamise seadus"* – RT I 1996, 3, 57; 2005, 39, 308), thus leaving almost no room for collective agreements and employment contracts. Besides, collective agreements do not play a very important role in the regulation of any of the aspects of employment relationships in Estonia. If any, contracts of employment and/or collective agreements regulate the following questions regarding the termination of employment relationship: the employees' fundamental breaches; notice periods and the amounts of compensation to be paid upon termination, the priorities of continued employment upon a lay-off. A contract of employment as well as a collective agreement may only stipulate more favourable terms than the laws; the same hierarchy is established between a contract of employment and collective agreements.

In **Hungary**, there are three fundamental laws from July 1992 defining the system of the Hungarian labour law (Act XXII of 1992 – the Labour Code, regulating employment relationships in the private sector; Act XXIII of 1992, regulating public administration; Act XXXIII of 1992, regulating budgetary institutions providing public services, such as health care, public education, etc.). Labour legislation has been amended extremely frequently, some laws even more than forty or fifty times during the last 15 years, which resulted in a high level of uncertainty of law. According to the Hungarian labour legislation, collective agreements and contracts of employment may derogate in favour of the employee, however, there are some mandatory statutory rules, which do not allow any derogation, even not to the favour of an employee, and such are also the rules on the modes of termination of employment. In Hungary, as a general rule collective bargaining takes place at the level of a particular employer, whereas collective bargaining at the industry or national level is missing. Therefore, the importance of collective agreements as a source of law for the termination of employment is low. The role of agreements between employer and the workers' council is insignificant as well.

In **Latvia**, employment relationships are regulated mainly by the laws, the most important being the Labour Code from June 2002. Collective agreements, working procedure regulations, contracts of employment and orders of the employer may only be more favourable to the employee if compared to the provisions of the laws. The same rule is valid for the relationship between a contract of employment and collective agreements.

In **Lithuania**, the primary legal source in the field of termination of employment relationships is the Labour Code of 4 June 2002 (State Gazette, 2002, No, 64-2569, in force since 1 January 2003; Articles 124-141 and Article 297). The Labour Code is statutory considered to be *primus inter pares* in the Lithuanian system of Labour Law: in case of a contradiction between a provision of the Labour Code and provisions of another law or a regulatory act, the provision of the Labour Code shall apply (Article 11 (1) Labour Code). There are some other laws and government regulations. Since the law regulates termination of employment relationships in a highly detailed and imperative way, collective agreements play a marginal role (the most frequent being collective agreements at the enterprise level). Collective agreements, internal regulatory acts and contracts of employment may not be less favourable to the employee than the laws.

In **Malta**, the Employment and Industrial Relations Act from 2002 governs the termination of employment relationships. This Act vests the Minister responsible for

Employment and Industrial Relations with the authority to issue regulations, in the form of subsidiary legislation, and many of them cover also various aspects of termination of employment (such as collective redundancies, transfer of business, fixed-term contracts, etc.). In the public service, conditions of employment are regulated by the Public Service Management Code (*Estacode*), which is a collection of circulars and other rulings issued by the Management and Personnel Office at the Office of the Prime Minister. It has to be pointed out that in Malta, collective agreements are not considered to be a source of law, nevertheless, they play a very important role also regarding the termination of employment.

In **Poland**, there are the following sources of law relating to the termination of employment relationships:

- Constitution of April 2, 1997;
- Labour Code of June 26,1974 (Dz. U. of 1988, No. 21, item 94 as amended);
- Statutory Act of September 16, 1982 (Dz. U. of 2001, No. 86, item 953 as amended) on state employees;
- Statutory Act of May 23, 1991 (Dz. U. of 2001, No. 79, item 854) concerning trade unions;
- Statutory Act of December 29, 1993 (Dz. U. No. 199, item 1674 as amended) concerning protection of employees' claims in case of insolvency;
- Statutory Act of March 13, 2003 concerning termination of employment relationships for reasons not related to employees (Dz. U. No. 90, item 844);

Other sources of law are collective agreements, work regulations, by-laws. They may not be less favourable than the laws. The same principle applies to contracts of employment. Most collective agreements primarily regulate wages and hours of work, thus they are not a very important source of law in relation to the termination of employment.

In **Romania**, the termination of employment relationships is mainly regulated by the Labour Code, adopted in 2003 and amended in 2005 ("*Codul muncii"*, Law No. 53/2003, Official Bulletin of Romania No. 72/2003; Law No. 371/2005, Official Bulletin of Romania No. 1147/2005). There are some specific laws for some categories of employees (for example civil servants, teachers, etc.); they stipulate only few rules derogating from the general provisions of the Labour Code. Collective agreements, company's internal regulations and contracts of employment may also provide (more favourable) rules on termination of employment.

In **Slovakia**, the most important source of law in this area is the Labour Code (Act No. 311/2001 Coll.). There are separate laws for public/civil service, but they do not stipulate for different rules on termination of employment. Practically all existing labour law provisions governing the termination of employment relationships are set out in the Labour Code, except for termination of employment relationships of university teachers (Act No. 132/2002 Coll. on Universities provides for *ex lege* termination of employment for university teachers at the conclusion of the school year in which the teacher reaches 65 years of age). Besides laws, sources of law are implementing regulations, collective agreements, company-level normative acts and good morals.

In **Slovenia**, the most important legal source for the termination of employment is the Employment Relationships Act (*"Zakon o delovnih razmerjih*", Official Gazette of the Republic of Slovenia, No. 42/02, 15 May 2002, especially Articles 75-119). There are some other laws, which are relevant to this issue in some aspects. The Employment

Relationships Act applies to the public sector as well, unless stipulated otherwise by a special act (Public Servants Act, *"Zakon o javnih uslužbencih"*, Official Gazette of the Republic of Slovenia, Nos. 56/02 et al.; as amended, especially Articles 153-162) or other special acts (Defence Act, Police Act, etc.). In Slovenia, collective bargaining is rather centralised, the emphasis being at the industry level, whereas collective bargaining at the enterprise level is not so important. Collective agreements are an important legal source in the field of labour law and 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). The legal rules in the laws and collective agreements are mandatory. 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 laws; few exceptions to this fundamental rule of labour law are explicitly allowed, 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 those provided by law). Considering that the issue of termination of employment is regulated in detail by the law and collective agreements, the importance of a contract of employment for regulating the termination of employment relationship is rather small in practice for the majority of workers.

2.4. Role of judge-made law and custom

In the majority of new Member States – since they follow the tradition of continental legal systems – the 'judge-made law' and the custom do not constitute a formal source of law. Nevertheless, in practice the case law of labour courts and/or of Constitutional Courts is rather important for the interpretation of legal rules on the termination of employment in many new Member States (particularly in defining the grounds for dismissal, for example). In **Cyprus**, judge-made law has been very important in the development of labour law.

The role of custom is very limited (or is even of no relevance) in nearly all the new Member States covered by this reports. Only **Malta** reports that sometimes also custom is considered in the interpretation of laws.

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

3.1. Ways of terminating an employment relationship

In different new Member States, ways of terminating an employment relationship are as follows:

Bulgaria

- mutual agreement,
- by operation of law (in cases exhaustively laid down by the law, the contract of employment is terminated without giving notice),
- at the employer's initiative by way of dismissal with or without notice,
- at the employee's initiative (resignation) with or without notice.

The Bulgarian labour law does not regulate judicial termination of employment relationships.

Cyprus

- dismissal,
- resignation,
- constructive dismissal,
- redundancy,
- frustration (such as war, political riots, physical destructions).

In **the Czech Republic**

- mutual agreement,
- dismissal and resignation (termination of employment relationship with notice period),
- summary dismissal and summary resignation (immediate termination of employment relationship),
- termination of employment relationship during the probationary period by the employee or the employer,
- due to official decisions (an enforceable decision of a competent authority for the withdrawal of a residence permit, a final decision of court on expulsion),
- expiry of a fixed-term contract of employment,
- death of the employee.

Estonia

- mutual agreement,
- expiry of a fixed-term contract,
- resignation,
- dismissal,
- at the request of third parties,
- due to circumstances which are independent of the parties.

In practice, termination at the request of third parties or due to circumstances which are independent of the parties is rare.

Hungary

- mutual consent of the employer and the employee,
- dismissal and resignation (with notice period),
- extraordinary dismissal and resignation (without notice period),
- termination by immediate effect during the probationary period.

Ordinary dismissal and resignation do not apply in the case of a fixed-term contract of employment.

Latvia

- mutual agreement,
- resignation,
- dismissal,
- at the employer's initiative during the probationary period,
- by a court ruling (upon employer's request due to an important reason),

- by operation of law (expiry of the fixed-term contract of employment, imprisonment for more than 30 days, upon demand by a third party, death of the employer, death of the employee).

Termination by a court ruling due to an important reason is not very common, there is no Supreme Court judgement in any such case.

Lithuania

- by operation of law,
- mutual agreement,
- dismissal (dismissal for economic and similar reasons, dismissal on the ground of employee's fault, an initiative to terminate a fixed-term contract at the end of the term of the contract, an initiative to terminate the contract during the probation period),
- resignation (resignation on serious grounds, resignation on other grounds, an initiative to terminate a fixed-term contract at the end of the term of the contract, an initiative to terminate the contract during the probationary period),
- dissolution of the contract by the court (as an alternative to the reinstatement of the employee in case of unlawful dismissal).

Certain age or entitlement to a statutory state pension is not considered as a ground for the termination of employment relationship.

Malta

- by operation of law (expiry of a fixed-term contract, retirement when reaching the prescribed retirement age),
- dismissal (during probationary period for any reason, after probationary period for good and sufficient cause in case of a contract of employment for indefinite period and for any reason in case of a fixed-term contract),
- resignation (during or after probationary period),
- mutual agreement.

Poland

- by operation of law,
- mutual agreement,
- dismissal/resignation with period of notice,
- summary dismissal/resignation (without period of notice),
- expiry of the period for which the employment relationship was concluded.

Romania

- by operation of law,
- mutual agreement,
- dismissal,
- resignation.

Slovakia

- mutual agreement,
- dismissal/resignation with notice period,
- summary dismissal/resignation,
- termination during the probationary period,
- by operation of law (expiry of a fixed-term contract, death of the employee, official decision in case of foreigners, upon reaching 65 years of age for university teachers).

Slovenia

- mutual agreement,
- dismissal/resignation (with or without notice period),
- expiry of a fixed-term contract,
- death of the employee,
- death of the employer-natural person,
- by a court judgement (as an alternative to the reinstatement of an employee in case of unlawful dismissal),
- by operation of law (in case of a permanent disability of an employee, if

a work permit for employment of a migrant worker expires or terminates),
- in other cases stipulated by law.

3.2. Exceptions or specific requirements for certain employers or sectors

In most of the new Member States there are special rules in the public sector, for example for civil servants, the armed forces, the police, in some new Member States also for teachers, actors, etc.

In **Bulgaria**, there are special rules for:
- civil servants (within the State or within the municipal administration),
- scientific research and lecturing staff (assistants, assistant professors and professors).

In **Cyprus**, there are special rules for:
- civil servants and employees of public corporations,
- the armed forces,
- the police.

Dismissals of public employees, military personnel and police personnel are rare in Cyprus. They enjoy the so called 'guaranteed employment'.

In **the Czech Republic**, there is a separate special legal regulation of termination of employment (service) relationships in the following cases, where ordinary legal rules of the Labour Code do not apply:
- judges and judicial trainees,
- public prosecutors and their clerks,
- members of the security forces,
- members of the armed forces,
- (other) civil servants.

A special regulation and therefore subsidiary applicability of general rules of the Labour Code is foreseen for certain areas of activity (local administration, university teachers, directors of public research institutions, transport employees, employees of the Probation and Mediation Service, the Public Defender of Rights), however, with rare exceptions, special legislation in these areas does not regulate any specific ways of termination of employment. Therefore, ordinary rules on termination of employment relationships in such cases apply almost without any exceptions.

In **Estonia**, ordinary rules on termination of employment in labour legislation do not apply to the following cases (they are not considered as an employment relationship):
- civil servants (state officials and local government officials whose service relationships are regulated by the Public Service Act),
- the armed forces,
- members of the Riigikogu (the Parliament), the President of the Republic or an official appointed to office by the President of the Republic or the Riigikogu,
- members of a farm family working in a family (farm) enterprise,
- household work and care for family members,
- the clergy of the religious communities.

There are some special rules on termination of employment for seafarers, but general labour legislation applies to them insofar as the special legislation does not provide otherwise.

In **Hungary**, there are separate statutory regulations for:
- judiciary and judicial assistant staff,
- public prosecutors,
- the police,
- the armed forces,
- the public administration and the budgetary institutions providing public

services, such as health care, public education, etc.

The Hungarian system of labour law (in a broad sense) was originally divided into three areas according to the legal status of the employer (private sector, public service within the public administration, public service within the budgetary institutions, such as health care, education, etc.), but due to numerous amendments to the legislation, this general principle has been broken and it has many exceptions, where the nature of the activity performed is more important than the status of the employer.

In **Latvia**, there are special rules for:

- civil servants,
- the armed forces,
- the police,
- seafarers,
- the clergy of the religious communities.

In **Lithuania**, ordinary rules of labour legislation do not apply to:

- the highest state officials and civil servants (persons working in a State or local municipal institution or agency, performing the functions of public administration; public prosecutors, the police, etc.),
- teachers at higher education institutions and universities (they are employed under fixed-term contracts),
- professional athletes (they work under a special civil-law contract).

Ordinary rules apply to full extent to persons working for government or public authorities under contracts of employment, employees of public-sector corporations, domestic servants, farm workers, persons working on board of ships (except for the rules on collective dismissals), port workers, members of religious communities.

In **Malta**, there are special rules for:

- the police,
- the seafarers on the merchants vessels.

In **Poland**, there are special rules for:

- civil servants, employees employed by the central state government, employees employed by municipal authorities,
- the armed forces,
- the police,
- teachers.

In **Romania**, there are special rules for:

- civil servants,
- employees of the transportation companies,
- employees of the post offices and telecommunication companies,
- magistrates,
- teachers.

In the above cases ordinary rules on termination of employment of the Labour Code apply insofar as not provided otherwise by special legislation. Special legislation usually stipulates derogatory rules on grounds and procedure of dismissal for disciplinary reasons, employees' retirement and, exceptionally, other modalities of termination of employment relationships.

In **Slovakia**, ordinary rules of labour legislation do not apply to civil servants (the armed forces, the police, customs officers, etc.), who are considered to have a service relationship and not an employment relationship. There are some special rules on termination of employment for university teachers (ex lege termination at the age of 65 years).

In **Slovenia**, there are special rules for:

- civil servants,
- the armed forces,
- the police.

Special rules on termination of employment within the public sector apply only to the civil servants who are employed in the State bodies (Government, Ministries, National

Assembly, courts, the Constitutional Court, etc.) and in the administration of local communities. Special rules on termination of employment do not apply to public agencies and institutions, public funds and other public law entities, neither do they apply to public-sector companies. There are some special rules for the educational sector (teachers in public and private schools), the cultural sector, etc.

3.3. Exceptions or specific requirements for certain types of contract

In most of the new Member States there are special rules for fixed-term contracts. Types of contracts which may also be subject to a special regulation sometimes include temporary work contracts, apprenticeship contracts and some other specific types of contracts, particular for the given Member State. On the other hand, part-time work is usually not subject to special rules. Contracts for home-working are subject to special rules in some new Member States, whereas in others they are not. The labour legislation does not cover 'economically dependent workers' in any of the new Member States; if the work is carried out on the basis of a civil law contract, the labour legislation, including the regulation of termination of employment, does not apply. In all new Member States special rules apply during the probationary period (see Section 8.).

In **Bulgaria,** labour legislation regulates the so-called 'employment contract for extra work'. Besides the basic full-time employment relationship, additional employment relationship is concluded for the working time of maximum 4 hours a day. Such additional part-time contract for extra work may be concluded with the employer of the basic employment relationship or with another employer. The employment relationships for extra work may be terminated according to general rules, as well as *ad nutum* termination is possible – either party may give notice to termination of 15 days. The contract for extra work may be terminated even before its expiry, and in this case compensation is due for the term that has not been worked off.

There are different periods of notice for contracts of employment for indefinite period (30 days, which may be prolonged to three months) and for fixed-term contracts of employment (three months).

In **Cyprus**, employees employed under a fixed-term contract cannot claim unfair dismissal on the expiry of the term. A fixed-term contract terminates automatically at the expiry of the term, no dismissal/resignation is required. However, ordinary rules on unfair dismissal apply to employees dismissed before the expiry of a fixed-term or a fixed-task contract.

Apprenticeship is regulated separately; apprentices do not enjoy protection against dismissal at the end of their apprenticeship contract.

The ordinary unfair dismissal rules apply to part-time employees.

In **the Czech Republic**, there are special rules for:

- fixed-term contracts of employment,
- subsidiary employment relationship.

A fixed-term contract is an exception, since the law gives the priority to the contracts of employment for indefinite period of time. Labour legislation also determines a maximum duration of such contracts (two years); yet, there are some exceptions to this rule.

A fixed-term employment relationship terminates by the expiry of the agreed term, which may be determined in weeks, months or years, or in relation to the duration of certain work or on the basis of other objective facts, which are certain enough to exclude any doubts about when the fixed-term employment relationship ends. It is important that the employer is obliged to notify the employee before the expiry of a fixed-term contract, if the work is supposed to end – as a rule at least three days in advance. Failure to notify an employee does not affect the termination of employment relationship itself (it is an *ex lege* termination of employment), but if the employee suffered a loss connected to this failure, the employer would be liable for it.

A fixed-term contract of employment may be terminated before the expiry of the agreed period of time in any way provided for by the law, including a mutual agreement, a summary dismissal/resignation and an ordinary dismissal/resignation.

If a fixed-term contract is concluded contrary to the legal rules, it is considered as being a contract of employment for indefinite period of time. If the employee continues to work for the employer after expiry of the agreed term and the employer is aware of this, a fixed-term employment relationship is changed into an employment relationship for indefinite term. A fixed-term employment relationship may continue after expiry of the agreed term, if, before the expiry of the agreed term, the employee and the employer agree on its prolongation (they may, of course, also agree to change a fixed-term employment relationship to an indefinite-term employment relationship, which continues after the expiry of the first contract).

A subsidiary employment relationship is an employment relationship, which is agreed upon in addition to the so called main employment relationship; it may be concluded for a shorter time than the prescribed full weekly working time. In a subsidiary employment relationship, the employee is provided with a substantially weaker protection of stability of employment. All ways of termination of employment are available, but there are some special rules. The regulation of a dismissal and a resignation in this case is the same for both the employer and the employee. The length of notice for both parties is 15 days. Neither party has to show a valid reason for termination of subsidiary employment relationship. The employer does not have to observe any other requirements prior to a dismissal (such as a duty to offer another job to the employee, to help an employee in seeking another job, participation of a trade union in the procedure, etc.).

There are no special rules for part-time contracts of employment in general (except for the so-called subsidiary employment relationship which was already described above).

In **Estonia**, a fixed-term contract can be terminated by the employer or by the employee pursuant to ordinary rules which apply to open-ended contracts, thus dismissal, as well as resignation, are possible before the expiry of the agreed time period. There is only one exception: if a fixed-term contract is entered into because the contract provides for a special benefit to the employee (for example training of an employee at the employer's expense), the employee may resign prematurely only, if he or she is prevented from continuing the work by an illness, incapacity for work or the need to care for a dependant family member.

Prior to the expiry of a fixed-term contract, both parties have to notify this to the other

party (except a fixed-term contract is concluded for replacing a temporary absent employee). The employer has to give notice to the employee at least two weeks prior to the expiry of the term, if the contract had been concluded for more than one year, and at least five days prior to expiry of the term, if the contract had been concluded for less than one year. Non-compliance with this obligation does not render the termination of a fixed-term contract invalid, but the employer is liable to pay compensation (average daily earnings for each day of delay). The employee has to notify the employer, too, but there is no sanction prescribed for non-compliance.

If neither party demands the termination of a fixed-term employment contract by the notification or if a new employment contract is not entered into and the employment continues after the expiry of the term of the contract, the fixed-term employment contract becomes an open-ended employment contract. The same transformation occurs, if a fixed-term contract is concluded unlawfully, i.e. outside the cases determined by the law. Then, the contract may be terminated only in accordance with general rules for open-ended contracts.

Further, ordinary rules on termination of employment in labour legislation do not apply to the following cases (since they are not considered as an employment relationship):

- work on the basis of a contract of service,
- work on the basis of contracts for services or other civil law contracts,
- the public works.

In **Hungary**, a fixed-term contract of employment may not be terminated prior to the agreed period of time by ordinary dismissal/resignation. Termination of the contract before the end of the term is possible only in two cases: during a probationary period and in case of extraordinary circumstances. If the employer terminates the fixed-term employment before the end of the term, he or she is liable to pay to the employee the average salary for the remaining period of time, but not more than one year's average salary.

In case of the renewal of a fixed-term contract after the expiry of the previous one, the employer has to prove a lawful interest for doing so, whereby the maximum duration of (all) fixed-term contracts is five years.

There are special rules for temporary employments by the temporary work agencies, too. This type of employment has been regulated since 2001. Hungarian provisions do not prescribe a fixed duration of this type of employment relationship, neither do they limit the duration of the contract between the temporary work agency and the user enterprise. The regulation of termination of employment relationship between the temporary work agency and the 'temporary worker' is separated from ordinary provisions on termination of employment relationships, whereby different terminology is being used as well. There are four ways of terminating this type of employment relationship: by mutual agreement, by notice, by immediate discharge and by immediate effect. A fixed-term temporary employment can only be terminated by immediate discharge or by mutual agreement, but not so by notice. Although these possibilities are similar to general rules, they are considered to be a separate and different system of termination of employment.

Special rules apply if the employer (temporary work agency) unlawfully terminates the employment relationship. In

this case the employee cannot claim to be reinstated; the court can only order financial compensation (for the lost wage, other benefits and any damages incurred). In case of unlawful termination of a fixed-term employment**,** the agency must pay a sum of the salary due for the remaining period of employment or a maximum of six months' average salary.

In **Latvia**, there are special rules for a fixed-term contract. It may be concluded only in certain cases determined by labour legislation, the maximum duration being two years. The employment relationship terminates by the expiry of the agreed period of time. If the employer does not intend to continue the employment relationship, he or she has to notify that to the employee before the expiry of the contract. If neither party requires termination of the contract and the actual employment relationship continues, the contract of employment is deemed to be concluded for an indefinite period. If a fixed-term contract was not permissible in the given circumstances, such contract is deemed to be concluded for an indefinite period. Termination of a fixed-term or fixed-task contract prior to the agreed period of time is possible according to ordinary rules; both the resignation by the employee and the dismissal by the employer are possible.

The legislation on termination of employment applies to all employees with an employment relationship. When assessing the nature of a particular legal relationship, substance prevails over form. The agreement, formally concluded as a service agreement, has to be construed and interpreted as an employment agreement, if all the material elements of the employment relationship are present.

In **Lithuania**, there are special rules on the termination of a fixed-term contract of employment. The rules are different for an employee and for an employer. A fixed-term contract may be terminated prior to the expiry of the term by an employee with a notice even without any grounds, whereas an employer is entitled to terminate a contract prior the agreed period of time only in extraordinary cases or if he or she pays a sum of the average salary to the employee for the remaining period of the contract. There are additional grounds for termination of short fixed-term contracts with the length of up to two months and seasonal contracts.

In case of a fixed-term or fixed-task contract there is no *ex lege* termination upon the expiry of the agreed period of time or upon the completion of the agreed task. The expiry of the fixed-term contract is one of the pre-conditions for the termination. Another pre-condition is the will of one of the parties to finish the employment relationship, which has to be expressed on the last day of a fixed-term contract at the latest. There is no eligibility to a severance payment in case of termination of a fixed-term contract, neither there is any special protection of the particular (vulnerable) categories of employees, guaranteed in case of dismissal, with the exception of terminating the employment contract with a pregnant employee. If after the expiry of the contract the employee continues to work and neither of the parties has, prior to the expiry of the term, requested to terminate the contract, the contract shall be considered to become an open-ended contract.

There are no special rules on termination of employment for part-time workers and for home-workers.

Job training contracts as well as apprentices' contracts are not considered as contracts of employment. Contracts of employment for temporary work, for intermittent work, for work on-call and solidarity contracts are not

regulated by the Lithuanian labour legislation.

In **Malta**, there are special rules for a fixed-term contract of employment, where the end of the contract is determined by reaching a specific date, by completing a specific task or through the occurrence of a specific event. Fixed-term contracts can also be terminated for any reason whatsoever and without the need to give any prior notice but in such cases a penalty shall be payable by the terminating party to the other party. In the case of a premature termination of a fixed-term contract by one of the parties (dismissal or resignation prior to the expiry of the agreed period of time), the employer/employee has to pay to the other party a sum equal to one-half of the salary that would have accrued to the employee in respect of the remainder of the time specifically agreed upon (excluding remuneration for overtime, bonuses, allowances and alike).

A fixed-term contract shall be considered a contract for indefinite period of time, if the employee has been continuously employed under the contract for a fixed term (taken alone or with the previous contract) exceeding a period of four years and the employer cannot provide objective reasons to justify the renewal of such fixed-term contract. There are two exceptions to this rule:

- Collective agreements may modify the application of this rule by substituting it with their own provisions, whose aim is to prevent abuse arising out of the use of successive contracts for a fixed term. Collective agreements may provide for one or more of the following: the objective reasons justifying the renewal of such contract, the maximum total duration of successive fixed term contracts, the number of renewals of such successive fixed term contracts.
- This rule does not apply to the public sector.

If the contract expires and the employee is retained by the employer, she or he shall be deemed to be employed for an indefinite period of time, unless the employee is given a new fixed-term contract within the first twelve working days following the expiry of the previous contract.

If an employee has been retained in employment after the date of termination of a fixed-term contract of service or is re-employed by the employer for a fixed or indefinite term within one year from the date of termination of the fixed-term contract, the conditions of employment shall not be less favourable than those which would have been applicable had the contract been for an indefinite time and the aggregate probationary period shall in no case be longer than that provided for by law.

There is a special provision also for a part-time contract of employment: if an employee refuses to transfer from part-time to full-time work and *vice versa* this cannot constitute a valid reason for termination of employment.

Apprenticeship is considered as an employment relationship therefore the ordinary rules on termination of employment relationships apply.

In **Poland**, there are special rules for:

- fixed-term contracts of employment,
- apprenticeship contracts,
- home workers.

A fixed-term employment relationship terminates with the expiry of the agreed period of time. Neither party (the employer or the employee) may give notice of termination prior the expiry of the contract,

unless a special agreement is made by the parties to this end who concluded such contract for at least a period of six months; in this case the notice period is two weeks. In case of contracts concluded with the purpose to substitute an absent employee, the period of notice is three working days. Summary dismissal/resignation is possible, too, if there is an important ground justifying prior termination of the contract.

In general, ordinary rules apply also to part-time employment relationships, probationary contracts and contracts, which are concluded for intermittent work, work on call or seasonal work. For the latter, there are special rules providing for shorter periods of notice, which are determined either in weeks or days.

Home workers and apprentices are not considered to be employees under the labour legislation. Their contracts do not constitute contracts of employment and their termination is subject to special rules.

In **Romania**, there are no specific requirements for certain types of contract. The legislation regulates indefinite-term and fixed-term contracts of employment, full-time and part-time contracts, temporary work contracts, home-working and apprenticeship contracts without mentioning any special rules in relation to the termination of these types of employment contracts.

In **Slovakia**, a fixed-term contract of employment is terminated upon the expiry of the agreed period, but such a contract may also be terminated before the expiry of agreed period of time; in this case it is possible to apply any mode of termination that is provided for in the labour legislation. The employers may enter into a chain of fixed-term employment relationships for a period of up to three years without any restrictions. After the lapse of three years, a chain of fixed-term employment relationships is allowed on the basis of substantive reasons, which are defined very broadly. A fixed-term contract of employment has to be concluded in writing. It is transformed into an open-ended contract if concluded contrary to statutory requirements or in case the employee, with the employer's knowledge, continues to perform the work after the expiry of the agreed period of time (*ex lege* transformation of a fixed-term contract into an open-ended contract of employment does not apply in case of a part-time contract with less than 20 hours a week).

There are special rules for a part-time contract of employment with less than 20 hours a week (for instance, no *ex lege* transformation of a fixed-term contract into an open-ended contract – see above; shorter periods of notice with a minimum of only 15 days; a written dismissal does not have to state a statutory ground for a dismissal). The question is raised as whether such regulation is appropriate or discriminatory.

In **Slovenia**, labour legislation regulates different types of the so called atypical, flexible contracts of employment: fixed-term employment, temporary work, home work (and tele-work) and part-time work. All of them are considered as employment contracts and labour legislation applies to them wholly. In general, part-time workers, temporary workers, home workers and workers with fixed-term contracts enjoy the same rights as all other workers.

A fixed-term contract (according to the law, it is an exception; yet, in practice, more than 70% of all new employments are based on 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 and resignation.

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 can be concluded, including its continuous prolonging, is limited to a maximum of two years (for smaller employers until 2010, the maximum period is limited to three years). If a fixed-term contract is concluded contrary to the law, or if the employee continues to work even after the expiry of the contract, it is assumed that a contract of employment for an indefinite period of time has been concluded. That means that such contract may be terminated only according to the ordinary rules as an open-ended contract.

An employment contract for temporary work may be concluded for a definite or indefinite period of time. According to the law, a premature cessation of the user's need for a temporary employee does not represent a valid reason for terminating an employment contract of this employee by the temporary work agency.

Apprenticeship is considered as a part of an employment relationship (exceptionally, apprenticeship may be carried out on the voluntary basis, without an employment relationship). The employer may not terminate an employment contract during apprenticeship, except if there are reasons for a summary dismissal or in cases of bankruptcy, compulsory composition or liquidation of the employer.

There are no special provisions in labour legislation regulating work on call or intermittent work or solidarity contracts. Labour legislation does not cover 'economically dependent workers'. If the work is carried out on the basis of a civil law contract, labour legislation does not apply. However, labour legislation 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.

3.4. Exceptions or specific requirements for certain categories of employer

In all new Member States there are special provisions for collective dismissals (see Section 6.5.3.), since they are all bound by the *acquis communautaire*, including the Directive 98/59/EC on collective redundancies. Except for collective dismissals, there are no special provisions for particular categories of employers in **Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Romania** and **Slovakia**.

In **Poland**, the labour court may decide not to reinstate an unlawfully dismissed employee, whose contract of employment was terminated by the employer employing a limited number of employees, if such reinstatement may be treated by the court as contrary to social interests.

In **Slovenia**, there are few exceptions for the 'smaller employers' (those employing up to ten employees). For them shorter periods of notice may be determined by branch collective agreements than provided for by the law. Apart from that, smaller employers

wishing to dismiss for economic reasons or for reason of incapacity do not have to check prior to a dismissal whether it is possible to find another suitable job for the employees concerned.

3.5. Exceptions or specific requirements for certain categories of employees

In **Bulgaria**, the following categories of employees enjoy stronger protection against dismissal:

- pregnant women, mothers with a child under three years of age and women whose husbands are serving their compulsory military service;
- employees with reduced capacity for work who have been reassigned to a suitable job and persons with disabilities;
- employees suffering from certain diseases (the ischemic heart disease, mental disease, diabetes, oncology diseases, tuberculosis and occupational diseases);
- employees who are on their granted leave of absence;
- trade union representatives.

In the above cases, the employer has to follow the preliminary procedure and acquire a prior permission of the regional labour inspectorate.

In **Cyprus**, the ordinary redundancy provisions do not apply to:

- employees over the normal retirement age (in general, those who have reached the age of 65 cannot claim unfair dismissal);
- domestic servants who are members of the employer's immediate family;
- managers and directors, if they are employed under a contract (if they are members of the Board of Directors, they can be removed from their office by the decision of the shareholders' general meeting).

In **the Czech Republic**, there are special rules for top managers: they can be removed from their office without stating a reason, but this does not in itself cause the termination of their employment relationship; the employer is obliged to offer them another suitable job and only if the employer does not have such a job or the former manager refuses the offered job, he or she becomes redundant and may be dismissed.

In **Estonia**, the following categories of employees enjoy a stronger protection against dismissal:

- pregnant women and persons with a child under three years of age (a dismissal on certain grounds is prohibited, i.e. lay-off, unsuitability of an employee due to the lack of professional skills or due to health reasons, long-term incapacity for work),
- minors (persons between 13-17 years of age; for them rules on probationary period do not apply; in case of lay-off or unsuitability of an employee, a dismissal is only possible after the consent of the labour inspector),
- employees' representatives (shop stewards, elected representatives of trade unions, working environment representatives and members of the working environment council; they enjoy special protection during their term of office and one year afterwards – dismissal is possible only in exceptional cases and only after the consent of the labour inspectorate).

Notice periods and severance payments depend on the employee's length of service with the employer.

Further, ordinary rules on termination of employment do not apply to the following persons (they are not considered to be employees):

- directors and members of administrative boards of companies and other legal persons,
- persons working during their imprisonment.

In **Hungary**, there are special rules for managers, employees in chief executive and in other executive positions. According to the labour legislation, they are considered as a special category of employees. For the employees in chief executive positions, the following special rules apply: the employer does not have to justify a dismissal; special protection against dismissal (for instance, during incapacity for work due to illness, for older employees who will reach the retirement age within less than five years, etc.) does not apply; there are longer time-periods within which a dismissal is possible; the liability of an executive employee in case his termination of employment is contrary to the prescribed rules is more severe (instead of a general rule that an employee is liable to pay compensation equal to his or her average earnings owed for the notice period, an executive employee may be liable to pay up to his or her average earnings for twelve months). For employees in other executive positions, there are just longer time-periods within which a dismissal is possible, other general rules on termination of employment apply to them without exceptions.

Certain vulnerable categories of employees, such as older employees, women employees, employees absent from work due to an illness, etc. enjoy special protection against dismissal.

In **Latvia**, ordinary rules of labour legislation on the termination of employment do not apply to managers (members of executive bodies of commercial companies), although they are considered as employees. According to the court practise – although there is no clear provision in the legislation – the commercial law overrides the labour law in this case and therefore a dismissal procedure regulated by labour legislation does not have to be followed. Managers are elected and dismissed by the decision of the shareholders meeting.

Special rules on termination of employment, guaranteeing stronger protection, apply to:

- women employees in connection with their pregnancy and maternity (prohibition of termination of employment during pregnancy and in the first year after the child birth or during the whole period of breastfeeding),
- employees with disabilities,
- employees who are temporary incapable to work or who are on leave due to other justifiable reasons,
- members of trade unions (a prior consent of the trade union is necessary, except in certain cases, such as liquidation of the employer, during the probationary period, etc.).

There are special rules on termination of employment for minor employees (under 18 years of age). Their employment relationship may be terminated upon demand by a third party (parents, guardians, labour inspectorate) if the work threatens safety, health or moral of the minor or may have negative influence on the development and education of the minor. Such demand has to be in writing. If a valid and duly substantiated demand is filed, the employer has to terminate the employment relationship with the minor within five days and is liable to pay a severance payment of at least one month salary.

In **Lithuania,** members of supervisory bodies of companies as well as members of administrative/management boards are not considered to be employees. However, the latter are often also managers or heads of administrative departments or units of the company and therefore employees as well. There are some special rules for them; according to the court practice they enjoy a limited degree of protection against dismissal, since if the general meeting of shareholders decides to remove them from the office before its expiry, this is recognised as a valid reason for the termination of their contract of employment (procedural requirements of labour legislation, such as notification, priority, offer of another suitable job, special protection for certain categories of employees, etc., do not apply).

There are also some special rules regulating the termination of employment relationship for young and older employees. In case an employee is under 18 years of age, a stronger protection is guaranteed (the contract of employment may be terminated by the employer without any fault on the part of the employee in extraordinary cases only and the period of notice must not be less than four months). Identical guarantees are provided for employees, who will be entitled to the full old-age pension in not more than five years (the statutory pension age for men is 62.5 years and for women 60 years). In addition, employees who are eligible for the full old-age pension may terminate an open-ended contract of employment by giving the employer a three day notice; they are entitled to a severance pay of two months average monthly salary.

Foreigners (non-EU citizens) are employed under fixed-term contracts (usually for one or two years), since their work permit is temporary.

There is no distinction between white-collar and blue-collar workers in Lithuanian labour law.

In **Malta**, there are certain special rules on termination of employment for women employees in connection with their maternity (prohibition of dismissal).

The rules on termination of employment relationship depend on the length of service of the employee. All employees are subject to a probationary period during the first six months of their employment (in certain cases during the first year), unless otherwise agreed upon by the parties; special rules apply during the probationary period (see Section 8.). Further, the length of period of notice depends on the length of service with the employer as well.

In **Poland**, there are few special rules, but, in general, the same rules apply to all employees. Periods of notice and severance payments vary between employees depending on their seniority (the length of service with the particular employer).

Directors and managers at the highest managerial positions are not entitled to the reinstatement, regardless of the reason for the termination of their employment relationship. Otherwise, if they are employed under a contract of employment, ordinary rules on termination of employment apply to them, too.

In **Romania**, there are some special rules, for example for the legal adviser employed by a company by means of an individual contract, for managers and executive personnel (different periods of notice). There is special protection against dismissal (prohibition) for certain categories of vulnerable employees, e.g. pregnant employees, employees on maternity and paternal leave, elected trade union

representatives, etc. (special protection does not apply in case of a compulsory composition or bankruptcy).

In **Slovakia**, in case of termination of employment of an employee under 18 years of age, the employer is obliged to request the opinion of the latter's legal guardian. There are special, more protective rules on termination of employment for certain categories of employees, for example, those with disabilities, pregnant employees, employees on maternity or parental leave, employees during a temporary work incapacity due to an illness or an accident, employees' representatives, etc.

The employer may not dismiss an employee during the 'protected' periods, namely:

- during a temporary work incapacity of the employee due to an illness or an accident (unless the employee has caused his or her incapacity for work), and during the period between the filing of a proposal for residential treatment or commencement of spa treatment until the completion of that treatment,
- during pregnancy or maternity leave of a female employee or during parental leave of a female or male employee,
- during the leave granted for the performance of a public office,
- during the period when, based on a medical certificate, the employee performing night work is temporarily unable to perform night work.

However, prohibition of dismissal does not apply in certain cases (e.g. in case of a disciplinary dismissal most of the special protection does not apply).

Dismissal of an employee with disabilities requires a prior consent of the competent Office of Labour, Social Affairs and Family. This is not necessary in the case of the winding-up of the employer or its relocation or in the case of a breach of work discipline by the employee.

A dismissal of an employees' representative requires a prior consent of the respective employees' representative body. Such protection is granted during the term of office and another six months afterwards.

In **Slovenia**, there are specific (less protective) rules for managers. On the other hand, there are special rules, ensuring stronger protection against dismissal for:

- employees' representatives (an employer may not dismiss an employees' 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; employees' representatives enjoy special protection during the entire period of their term of office and another year after its expiry),
- older employees,
- pregnant employees and parents – workers with family responsibilities (an employer may not dismiss a female worker during her pregnancy and all the time she is breastfeeding; an employer may not dismiss an employee or the employment relationship may not come to an end during the entire period of his or her absence due to the parental leave in the form of a full absence from work; in exceptional cases – summary dismissal, cessation of the employer – an employer may

dismiss such employee and the employment relationship may come to an end, but only after the prior consent by the labour inspectorate),
- employees with disabilities and
- employees absent due to illness.

Besides, a dismissal is not possible in the case the employee is temporarily, up to a maximum of 6 months, absent from work due to imprisonment or a similar punishment measure.

The Slovenian labour legislation does not make a distinction between white- and blue-collar workers; the same rules apply to all.

There are differences in protection against dismissal and the rights resulting there from, depending on the employee's length of service within the employer (longer periods of notice, higher severance payments, duty to check for other job before a dismissal only for employees with at least six months service within the employer, etc.).

4. MUTUAL AGREEMENT

In most of the new Member States the mutual agreement is explicitly mentioned as one of the ways of terminating the employment relationship in the labour legislation. **Malta** is an exception, since its labour legislation does not mention it; nevertheless, it is one of the valid ways of terminating the employment relationship governed entirely by civil law rules. In those new Member States, where labour legislation regulates a mutual agreement to terminate employment relationship, there is either just a short provision allowing it or there are a few more, usually prescribing written form of the agreement and perhaps some other formal requirements, but no labour legislation regulates it in detail and usually there are no substantive requirements either. In all new Member States general rules on contracts apply to mutual agreements.

Since an employment relationship is terminated at the will of both parties, 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, it is not rare that a mutual agreement conceals a dismissal.

In some new Member States the conclusion of a mutual agreement is the most frequent way of terminating the employment relationship and/or is considered by the employers as the 'easiest', 'safest' way of terminating the employment relationship; this is explicitly reported from **Bulgaria**, **the Czech Republic** and **Latvia**. Contrary to that, it is explicitly reported from **Slovakia** that a dismissal is by far the most frequent way of terminating an employment relationship.

4.1. Substantive conditions

In general, there are no substantive conditions for a mutual agreement in labour legislation. There are no specific prohibited clauses either. Such an agreement is valid even if it is concluded during the so-called protected periods or with the employees who enjoy stronger protection against dismissal. If there is a valid mutual agreement on termination of employment, the rules of labour legislation governing dismissals do not apply.

Although labour law does not prescribe any substantive conditions, a mutual agreement on termination of employment has to fulfil certain substantive conditions according to general rules on contracts in order to be valid. In all new Member States, it is required that the agreement is genuine, that the mutual agreement between the parties really exists, that the employee's will to terminate an employment relationship is serious and free, that the agreement was not concluded under force or threat or by fraud of an employer. It is necessary to protect an employee against the misuse of this mode of employment termination by the employer.

In **Bulgaria**, labour law prescribes a special substantive requirement. A distinction is made between an ordinary mutual agreement and a mutual agreement with compensation, which may be concluded at the initiative of the employer. Whereas for the first one there are no special substantive conditions, the later is valid and effective only if it provides for a compensation for the employee of at least four employee's gross monthly salaries, which has to be paid not later than one month after the termination of employment. If the employer fails to perform this

obligation, the employment contract is deemed as not being terminated.

In **Slovenia**, the so called '*bianco*' mutual agreements (also '*bianco*' resignations) are null and void according to the case-law. An agreement on termination of employment, which is signed by an employee on an empty form (or an empty letter of resignation) at the time of the conclusion of a contract of employment in order to make it possible for the employer to fill in the date later, when he or she wishes to dismiss an employee, is not valid. There is no real and free will of the employee, when it comes to the termination of employment. In this case the termination of employment is in fact solely a consequence of the employer's will. An employee cannot waive her or his rights in connection with the termination of employment. This is in fact a concealed dismissal and therefore rules on dismissal should be respected.

4.2. Formal requirements

Formal requirements aim at protecting an employee against the misuse of this mode of termination of employment relationship by the employer. Besides, their aim is to supply the parties with the evidence on existence of the mutual agreement and its content, thus preventing disputes between parties.

In nearly all the new Member States, the mutual agreement on termination of employment has to be in writing. But there are differences as regards the consequences of non-compliance to this rule – only in some new Member States such an agreement is not valid, unless it is in writing.

Besides, as a rule, 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. There are some differences between the Member States as regards the need to explicitly determine the date of termination in the agreement and the question of how the date of termination can be stipulated in the agreement, as regards the possibility to conclude an agreement under condition, etc.

In **Bulgaria**, a mutual agreement has to be in writing in order to be valid. It may be concluded as an offer and an acceptance of this offer (the other party has seven days to accept or refuse the offer; if there is no reply, it is assumed that the offer is not accepted).

In **Cyprus**, there are no specific formal or procedural requirements.

In **the Czech Republic**, the labour legislation requires a written form, but it does not prescribe any sanctions for non-compliance with this provision. That means that also oral agreements and agreements made by an implied expression of the will are valid. An agreement may be concluded as an offer and acceptance of this offer. The expression of the will of both parties has to be clear, serious and free. The agreement has to stipulate the date of the termination of employment. It may also indicate the reason for termination of employment; however this is not a requirement. The termination of employment relationship may be immediate or after a certain period of time. An agreement to terminate the employment relationship may also be concluded under a condition.

In **Estonia**, a written agreement is necessary and, apart from that, the employer has to formalise the termination of employment in the contract of employment, in writing (on the basis of the concluded written agreement). The written mutual agreement between the parties must clearly indicate both parties' will to terminate the contract.

The agreement is void, if it was signed under pressure, threat, gross disparity, etc.

In **Hungary**, the written form is a condition for an agreement to be valid. An agreement has to be unequivocal and has to determine the date of termination of employment (either with immediate effect or after a certain period of time).

In **Latvia**, a mutual agreement has to be made in writing in order to be valid. An oral mutual agreement on termination of employment is not binding and not enforceable.

A mutual agreement does not have to state the reason for termination of employment relationship, nor does it have to explicitly determine the date of termination (if no date of termination is stipulated in the agreement, the date of conclusion of the agreement is considered to be the date of termination of employment).

In **Lithuania**, a written form is required and it is a necessary condition for the validity of the termination of employment by a mutual agreement. The labour legislation also regulates the procedure: a written offer made by one party has to be presented to the other party who has seven days to decide whether to accept the offer or not. Having agreed to terminate the contract, the parties conclude a written agreement on the termination of contract, indicating the date of the termination of contract as well as other issues (severance payment, granting of unused annual leave, etc.). If the other party does not accept the offer within seven days, the offer is considered to be rejected.

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

In **Malta**, there are no special formal requirements for mutual agreement whatsoever; general civil law rules on contracts apply.

In **Poland**, a mutual agreement on termination of employment has to be in writing for the purpose of evidence; an oral mutual agreement is therefore not *per se* null and void. In general, there are no procedural requirements, unless a mutual agreement is considered as a part of collective redundancies; in such a case procedural rules have to be followed, i.e. employees' representatives have to be consulted by the employer.

In **Romania**, according to labour legislation a mutual agreement need not to be in writing to be valid. The will of the parties has to be unambiguous.

In **Slovakia**, labour legislation stipulates that employment termination agreements have to be in writing; yet, non-compliance with this requirement does not cause invalidity of the agreement, therefore an oral employment termination agreement is also valid. Nevertheless, the labour inspectorate may impose a fine upon the employer.

In **Slovenia**, a mutual agreement has to be in writing and it has to include a provision about the consequences for the employee with regard to exercising the rights to unemployment benefits (no such rights). An agreement which is not concluded in writing is invalid and has no effect. Apart from that, civil law rules on contracts apply.

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.

There are rather important differences as regards the severance payments in case of the termination of employment by mutual agreement. As a rule, such termination does not affect entitlement to a pension entitlement. Health insurance is terminated by the termination of employment relationship (immediately or after a certain period of time).

In **the Czech Republic**, the employee is entitled to severance payment, if the mutual agreement to terminate an employment relationship was made for reasons on the part of the employer. The employee is also entitled to unemployment benefit (the entitlement to this benefit does not depend on the mode of termination of employment), according to the general rules set out in the law (at least 12 months of paid employment within the last three years; no job available; no entitlement to a retirement pension; application for unemployment benefit).

Termination of employment relationship (by mutual agreement or by any other means) does not affect the entitlement to retirement pension. Participation in sickness insurance scheme ends with the termination of employment relationship.

In **Estonia**, the employer does not have to pay the employee any compensation, unless this is agreed upon by the parties or stipulated by the collective agreement. Non-payment of the agreed compensation does not render a termination of the employment contract unlawful. The employee is not entitled to an unemployment benefit in this case. Entitlement to the retirement pension is not affected. The health insurance cover of employees terminates two months after the termination of employment.

In **Hungary**, the labour legislation does not provide for a severance payment in case of termination of employment by mutual agreement, therefore an employee is entitled to it only if so stipulated by the agreement itself.

In **Latvia**, the legislation does not provide for a severance payment; nevertheless, it is quite common to agree on the compensation payable to the employee by the employer. The employer's failure to pay the agreed compensation does not *per se* render the mutual agreement void. If compensation is agreed upon, it is considered as an employment related income and is taxed in the same way as the salary.

An employee is entitled to an unemployment benefit with no waiting period, from the day when he/she has filed the application with the required documents (waiting period of two months is foreseen in two cases of termination of employment, namely in case of employee's resignation and in case of a dismissal due to a violation of employee's duties). Termination of employment by mutual agreement has no special effect on the statutory retirement pension scheme. It has no special effect on the sickness insurance, apart from the general consequences of the termination of the employment as such.

In **Lithuania**, there is no statutory right to a severance payment, nor does such case-law exist. An employee is entitled to a severance payment only if so stipulated by an agreement. The non-payment of the agreed sum does not affect the validity of the

mutual agreement on termination of employment.

The entitlements already acquired or being acquired under public retirement pension schemes and public sickness insurance schemes are not affected. Private pension schemes and private sickness insurance schemes hardly exist in Lithuania, but there is no legal obstacle to restrict the entitlements under such schemes.

In **Malta**, everything depends on the mutual agreement itself. There are no special impacts of this kind of termination of employment on the pension rights, health insurance or unemployment insurance.

In **Poland**, there is no legal entitlement to severance payments, so they entirely depend on the agreement itself. In case of redundancy, the law provides severance payments to the employees whose contract of employment was terminated either by a mutual agreement, or notice for reasons not related to that particular employee.

An employee is not entitled to an unemployment benefit. There is no negative impact on entitlements to public and private pension schemes. There is also no special impact on entitlements under public health insurance schemes (sickness benefits are paid to individuals who became ill within a period of 14 days – in some cases three months – after the termination of employment and are ill for at least a period of 30 days).

In **Romania**, there is no entitlement to severance payments unless agreed upon by the parties. The employee is not entitled to an unemployment benefit. Termination of employment relationship by mutual agreement of the parties does not affect the rights the employees have within the retirement pension systems or sickness insurance systems.

In **Slovakia**, there are no special provisions on the effects of a mutual agreement to terminate an employment contract. An employee is entitled to an unemployment benefit according to the general rules (three years of insurance in the last four years before the unemployment).

In **Slovenia**, there is no statutory right to a severance payment; such a right thus depends entirely on the agreement between the parties.

A (former) employee is not entitled to an unemployment benefit. Termination of employment by mutual agreement has no special effect on the retirement pension schemes (the pension insurance relationship ends upon termination of employment relationship; the acquired periods of insurance are safeguarded). The mode of termination of employment 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 either.

4.4. Remedies

In all new Member States employees have the right to bring an action before the court (either a specialised labour court or an ordinary civil law court), if they think that a mutual agreement to terminate the employment relationship is unlawful, invalid, void, in the same way as in any other case of termination of employment relationship. In some new Member States an arbitration procedure is also possible.

In **the Czech Republic**, the time limit for filing an action before the court is two months. If the mutual agreement is found to

be invalid, the employment relationship continues to exist if requested so by the employee; the employee is reinstated and has the right to the compensation for the entire period of time as well.

In **Estonia**, a dispute over the validity of a mutual agreement may be settled by the labour dispute committees and by the courts. Labour dispute committees are extra-judicial independent individual labour dispute resolution bodies which consist of a chairman, one representative of the employees and one representative of the employers. They are not competent to settle disputes over financial claims exceeding 50.000 kroons (approx. 3200 EUR). An action has to be filed within one month after the termination of employment. The committee has to organise a hearing not later that in one month after the filing a complaint. In labour disputes burden of proof is determined according to the general rules of civil law. If an action is successful, the termination is declared unlawful, an employee is reinstated and paid the salary for the entire period; if the reinstatement is not ordered the employee is paid a compensation of six months' average salary. If an employee requires so, the court has to order the reinstatement (although in most cases this is rather ineffective, since the employer dismisses the employee immediately after his or her return to work on the grounds of a lay-off). The state legal aid is available to employees who are unable to pay for competent legal assistance due to their financial situation.

In **Hungary**, an employee may bring an action before the court within thirty days. There is a special regulation of labour disputes.

In **Latvia**, the main remedy available is the court proceedings. Labour disputes are dealt with by civil courts of general jurisdiction. An employee may be represented by the duly authorised representative. Trade unions do not have a general competence to act on behalf of their members in individual disputes. The burden of proof is on the plaintiff. A system of state paid legal assistance is available for those with low income.

In **Lithuania**, the employee may contest the termination of employment and bring her or his case before a civil court of general jurisdiction within a period of one month after the termination of the relationship and receipt of the appropriate documents. A claim for unpaid severance payments has to be brought before the court within three years. Employees may be represented by trade unions or their representatives. They are exempt from the stamp-duty. The competent court is also the court where the work is performed or was performed or shall be performed.

Labour disputes are dealt with by the civil courts of general jurisdiction. Nevertheless, there are some special rules with regard to the resolution of individual labour cases in a separate chapter of the Civil Procedure Code. In labour disputes the court has very wide discretion to protect the employee's interests *ex officio*. In particular, the court may collect evidence on its own initiative, involve a third party in the procedure, decide *extra and ultra petitum,* apply alternative means for the protection of the infringed rights. The law sets short-time terms for the preparation and hearing of the labour case before the court. In 30 days, the case has to be prepared for hearings and a decision has to be made not later than within 30 days from the beginning of the hearings. However, in practice courts rarely meet these deadlines. There are also mandatory rules on interim relief on the prompt reinstatement of the unlawfully dismissed employee into the previous job and/or on the

award of a salary (such interim relief has to be issued in one day). In practice, the courts make use of this opportunity quite often.

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

If the mutual agreement on termination of employment is unlawful, the court will reinstate the employee to his/her previous job and award him/her the average salary for the entire period until the execution of the court decision. If reinstatement is not possible due to different reasons (for instance economic, technological, organisational or similar reasons), the employment contract will be considered terminated from the effective date of the court decision. In this case the court will award to the employee:

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

In **Poland**, a party to the mutual agreement may bring an action before the labour court. Legal action is possible within one year after the termination. The burden of proof is on the plaintiff. There is legal assistance for persons with low income. Trade unions may act on behalf of any employee regardless of their trade union membership.

In **Romania**, each party may claim at the court for labour and social affairs that his/her consent has been vitiated. The trade union may act on the behalf of the employee, unless the employee either opposes or renounces. The burden of proof rests with the employer.

In **Slovakia**, both parties have a right to file an action before the court within a two-months preclusive period.

In **Slovenia**, an employee who believes that an agreement to terminate an employment relationship is unlawful and void may bring an action before the competent labour 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 law, the state provides for free legal aid for persons with low income. In disputes concerning the termination of employment the court is obliged 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 remuneration he or she would have earned had there not been an illegal termination of employment.

4.5. Vitiating factors

In all new Member States general principles on contracts apply. A mutual agreement to terminate a contract of employment may be

declared null and void, if an error, threat, pressure or fraud occurred.

4.6. Penalties

Considering that a mutual agreement to terminate an employment relationship is a contract, the liability for breach of a contract is governed by the general rules on contracts applicable to this agreement.

In some new Member States violations by the employer in connection with the mutual agreement are considered as an offence and a fine may be imposed on the employer (for example, in **Bulgaria**, if the consent of the employee is wrested by the employer with coercion, menace or fraud; in **Lithuania**, in case of the employer's illegal action, for example pressure to sign an agreement, targeting the protected groups of employees, such as pregnant women, minor employees, employees with disabilities, etc., may be the ground for the employer's administrative or even criminal liability).

In other new Member States no particular penalties are prescribed by the labour legislation in relation to the mutual agreement (Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Malta, Poland, Romania, Slovakia, Slovenia).

4.7. Collective agreements

A common characteristic of all new Member States is that collective agreements do not include any particular provisions on termination of an employment relationship by mutual agreement. All is left to the parties involved.

In **Slovenia**, there is one exception – the branch collective agreement for banking sector comprises certain provisions on termination of employment by mutual agreement: they regulate the procedure to be followed by the employer when proposing such agreement to the employees, the content of the employer's offer, special rights offered to the employees, such as severance payments, compensations, etc.

4.8. Relation to other forms of termination

A mutual agreement is considered as a separate, independent ground for terminating an employment contract. A termination of employment can either be effected by mutual agreement or by other means, such as dismissal.

In **Cyprus**, an employment contract cannot be terminated by mutual agreement if it has been terminated in a different way (for example by a dismissal), unless the employee explicitly abandons his statutory rights to unfair dismissal compensation.

In **Latvia**, a mutual agreement may also be concluded during a disciplinary or a dismissal procedure or during the period of notice after the employee's resignation. If after the resignation the parties agree that the employee may leave before the expiry of the notice period, this does not change the nature of the termination of employment (it is still considered as resignation). A mutual agreement may also be concluded during an ongoing dispute process; in such a case a mutual agreement would serve also as a settlement between the parties.

In **Lithuania**, there is a clear link in practice between the amounts of compensations usually payable to the employee on the termination of contract by mutual agreement and those statutory severance payments paid by the employer in case of terminating the contract on economic grounds: if the employer proposes a mutual agreement, it is

expected that the employer will also propose a compensation which will not be lower than the severance payment as regulated for dismissal on economic grounds. There is no court practice as regards a mutual agreement to be reached after the contract has already been terminated on another ground (e.g. dismissal). In general, the rules on mutual agreement do not apply if the parties have reached a consensus (a peace treaty) during the legal proceedings concerning the dismissal.

In **Poland**, a combination between a mutual agreement and a dismissal may occur, when the parties to the employment contract which was terminated by dismissal with notice, agree to reduce the notice period.

In **Slovenia**, 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 of an employment relationship by mutual agreement should not be confused with agreements which the respective parties may conclude in connection with a dismissal. For example, an agreement on compensation instead of the period of notice: such an agreement may be concluded during the notice period, yet it does not change the nature of a dismissal, which has already been carried out, it just shortens the period of notice, whereas the employee is still considered to be dismissed and thus he or she enjoys all other rights provided for by the law and collective agreements. The second agreement, which may be concluded in connection with a dismissal, is a settlement agreement. It does not change the nature of a dismissal. 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

This chapter deals with the termination of an employment relationship otherwise than at the wish of the parties. In such cases, the termination of employment occurs by operation of law and no further action is required by the parties.

There are rather important differences between the Member States. Only few of them have an exhaustive list of grounds for termination of employment by operation of law in their labour legislation. There are different solutions as regards the question whether reaching certain (retirement) age or fulfilling of the conditions for the retirement cause *ex lege* termination of an employment contract or not, whether a sentence to imprisonment causes such termination, or whether the death of the employer causes such termination, just to mention some of them. Of course, there are also similarities: for example, in case of expiry of a fixed-term or a fixed-task contract (Lithuania is an exception, see below) or death of the employee.

A remark should be made as regards a fixed-term contract. Such a contract terminates by operation of law (with an exception of Lithuania) upon the expiry of the agreed period of time; but this happens in compliance with the wish of both parties, the only difference being that such wish was expressed already at the beginning, when concluding a contract of employment.

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

For a detailed overview of legal regulations on fixed-term contracts and their termination see Section 3.3.

In **Bulgaria**, the employment relationship is terminated by operation of law in the following cases:

- fixed-term contracts (by the expiry of the agreed period of time; by completing the work specified in the contract; upon the return of the temporary absent employee; see 3.3.),
- if the court ruling on wrongful dismissal is not followed by the actual reinstatement of the employee (if the employee either did not request the reinstatement or failed to appear at work within the 14 days' term after the judgement),
- 4 to 10 % of all jobs in the enterprise have to be suitable for pregnant women or persons with reduced capacity for work, who have priority in employment for these jobs; if there are no pregnant women or persons with reduced capacity to work, other people may be employed to these jobs, but when a person with reduced capacity for work or a pregnant women-employee needs another (suitable) job, the employment relationship of the employee occupying such special (suitable) job terminates,
- an employee refuses to take an alternative suitable job which is offered to him/her because he/she is not capable to work at the former workplace any more due to his/her health condition or disability,
- death of the employer (only if a contract was concluded with the employer in view of his/her personal needs, such as private secretary, etc.),
- death of the employee.

In **Cyprus**, frustration of the contract causes the termination of employment relationship by operation of law.

In **the Czech Republic,** the employment relationship is terminated by operation of law:

- in case of expiry of a fixed-term contract of employment (see Section 3.3.),
- in case of death of the employee,
- in case of a decision of a respective authority (expiry or termination of a residence permit for foreigners; on the contrary, expiry or another termination of a work permit does not in itself cause ex lege termination of employment, rather it is a ground for a dismissal; yet, a fixed-term contract may be concluded with a foreigner having a temporary work permit)

Cessation of the employer (with or without the liquidation) does not cause *ex lege* termination of employment, rather it may constitute a valid ground for a dismissal.

In **Estonia**, an employment relationship terminates by operation of law in the following cases:

- by the expiry of a fixed-term contract (see Section 3.3.),
- at the request of third parties (a statutory representative or a labour inspectorate may request that a contract of employment with a minor terminates; see Section 3.5.),
- in circumstances which are independent of the parties,
- sentence by a criminal court, which makes it impossible for the employee to continue his or her current work,
- non-compliance with the rules for hiring (i.e. restrictions on the work of women),
- non-compliance with the rules restricting the employment of close relatives by the same organisation in certain cases,
- death of the employee,
- death of the employer (in case of the personal nature of services rendered to the employer).

In **Hungary**, *ex lege* termination of an employment relationship occurs in the following cases:

- death of an employee,
- dissolution of the employer without a legal successor,
- expiry of a fixed-term contract (see Section 3.2.2),
- cessation of an employment relationship due to the change in the legal status of the employee (transfer from the personal scope of labour legislation to the personal scope of the legislation regulating civil/public servants).

The death of the employer – natural person - does not cause a termination of the employment relationship; this rule has no exception (the employment relationship is transferred to the successor).

In **Latvia,** an employment relationship terminates by operation of law in the following cases:

- expiry of a fixed-term contract (see Section 3.3.),
- request of third parties (parents, guardians or the labour inspectorate have this right in case of employment of a minor; see Section 3.5.),
- imprisonment for 30 days or longer,
- death of the employer (if work was closely related to a particular person),
- death of the employee.

In **Lithuania,** *ex lege* termination of an employment relationship occurs in the following cases:

- death of the employee,

- death of the employer or a liquidation of the employer without a legal successor, including voluntary liquidation (in case of bankruptcy, however, dismissals can also be started in accordance with bankruptcy legislation),
- dissolution of the contract by the court (if during the legal proceedings concerning the dismissal the court establishes that the employee may not be reinstated in his previous job);
- dissolution of the employment contract by the court (in case of violation of imperative provisions of laws prohibiting a certain employment, if the legal obstacles cannot be eliminated, if there is no possibility to employ the employee on another job with his/her consent or if the employment contract with a foreigner is concluded illegally);
- sentence by the court judgement, which makes further work of the employee impossible (e.g. imprisonment),
- the employee loses certain special rights, licences, etc., which are preconditions for the job (e.g. if a truck driver loses the driving licence),
- the employee is unable to fulfil obligations or to perform work due to his or her health situation or disability (such an opinion may be issued by a medical or a disability commission);
- an employee from 14 to 16 years of age, or one of his parents, or the minor's statutory representative, or his attending paediatrician, or the child's school demand that the employment contract be terminated.

In case of a fixed-term or fixed-task contract there is no *ex lege* termination upon the expiry of the agreed period of time or upon the completion of the agreed work (see Section 3.3.).

Reaching the retirement age does not constitute a valid ground for the termination of employment. The employee, however, may terminate the contract unilaterally with a three days' notice period; the employee is entitled to a severance payment in the amount of two monthly average earnings.

In **Malta**, a fixed-term contract automatically terminates upon reaching a specific date, upon completion of a specific task or through the occurrence of a specific event. No further action is required by the parties. For more see Section 3.3.

An employment relationship automatically terminates when the employee reaches the retirement age unless agreement to the contrary is concluded between the employer and the employee.

In **Poland,** the employment relationship is terminated by operation of law in the following cases:

- expiry of a fixed-term contract or completion of a specific task (see Section 3.3.),
- expiry of probationary period (see Section 8.),
- death of the employee,
- death of the employer if his undertaking is not transferred to a successor,
- imprisonment of the employee for a period exceeding three months.

In **Romania,** the employment relationship is terminated by operation of law in the following cases:

- death of the employee,
- death of the employer – natural person,
- a court judgment, declaring the death of a person or prohibiting an employee or employer from doing something if this causes the liquidation of the business,

- dissolution of the employer – legal entity,
- retirement of the employee (old-age retirement, anticipated retirement, partially anticipated retirement or retirement due to disability) upon the communication of the decision on retirement according to the law,
- the contract of employment is found to be null (by the consent of the parties or by a final judgement),
- reinstatement of a former employee, who has been unlawfully dismissed, on his or her previous position, the employment relationship of the employee who occupied the position in the meantime is terminated,
- sentence to imprisonment by the criminal court,
- withdrawal, by the competent authorities or bodies, of the approvals, authorisations, or certifications necessary for exercising one's profession,
- interdiction to exercise a profession or to perform a job, as a safety measure or complementary punishment, by the final judgment,
- expiry of a fixed-term contract,
- withdrawal of the parents' or statutory representatives' consent, for employees between 15 and 16 years of age.

In **Slovakia,** the employment relationship is terminated by operation of law in the following cases:

- expiry of a fixed-term or fixed-task contract (see Section 3.2.2),
- death of the employee,
- for foreigners, an expiry or withdrawal of a residence permit,
- for university teachers, ex lege termination at the end of the academic year in which they have reached 65 years of age.

In **Slovenia,** the employment relationship is terminated by operation of law in the following cases:

- expiry of a fixed-term or 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 the employee, which entitles to a disability pension,
- nullity of the contract of employment,
- expiry or termination of work permit,
- termination of the employment contract on the basis of a court judgement (in case of unlawful dismissal if the court does not order the reinstatement of the employee).

Reaching a certain age, the retirement age, or fulfilling the conditions for retirement does not cause an *ex lege* termination of employment (in 1999 the Constitutional Court found such legal provisions unconstitutional; still, there are certain exceptions); it cannot constitute a valid reason for dismissal, either. Besides, an opening of a bankruptcy procedure or a compulsory composition procedure or a liquidation procedure does not cause *ex lege* termination as either; in these cases rules on dismissals have to be followed with certain exceptions and special requirements; see Section 3.5.4.10.1.).

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. No further action of the parties is necessary.

In **Latvia**, there are certain procedural requirements in case of termination of employment of a minor on grounds of a request of third parties (parents, guardians or labour inspectorate), which are described in Section 3.5.

In **Romania**, there are no specific rules on that, nevertheless it is recommended for the employer to issue a written document ascertaining the occurrence of one of the situations which cause *ex lege* termination of the contract of employment.

In case of the reinstatement of a former employee, who has been unlawfully dismissed, on his or her previous position, which has been occupied by another employee, the employer is obliged to offer to the latter employee, whose contract of employment is terminated, a vacant job in the company, consistent with his/her professional training. Non-observance of this obligation does not have any consequence on the termination of employment. However, the employee may enforce this right before the court. The employee has to reply to the employer's offer by sending a written consent in three days. If the employer has no other suitable job, she or he is obliged to ask the employment agency for support in finding another job.

5.3. Effects of the existence of a ground

An employment relationship is terminated automatically, if one of the grounds for an *ex lege* termination of employment stipulated in the law comes to an existence.

In all new Member States an employee is not entitled to a severance payment in cases of an *ex lege* termination of employment (for exceptions see below in this Section).

As a rule, an employee is entitled to an unemployment benefit in cases of termination of employment by operation of law – except if she or he acquired a pension – according to general rules governing this area of social security (for exceptions see below in this Section).

Usually, the termination of employment by operation of law has no special effect on retirement pension schemes and no special effect on health insurance, which would deviate from the ordinary effects taking place irrespective of the mode of termination of employment (see above 4.3.).

In **Estonia**, there is a statutory right to a severance payment (compensation) in certain cases of *ex lege* termination of employment. For instance, in case of a termination of employment of a minor upon the request of third parties a compensation in the amount of one monthly salary has to be paid by the employer (see Section 3.5.) or in case of a termination of employment due to non-compliance with the rules for hiring (i.e. restrictions on the work of women) a compensation in the amount of three monthly salaries has to be paid by the employer.

In **Hungary**, in case of termination of an employment relationship due to a the transfer into the public sector, there is a detailed procedure with complex obligations in relation to the transfer of businesses (information and consultation procedure, etc.). In relation to this kind of termination of employment, the employee is entitled to a severance payment.

In **Latvia**, there is a right to a severance payment if an employment relationship with a minor is terminated after a request of a third party (see Section 3.5.). In other cases of termination of employment by operation

of law there is no right to a severance payment.

A person sentenced to imprisonment may be entitled to an unemployment benefit only if the conviction does not exceed three months; then, the person may apply for the status of an unemployed on the basis of terminated employment relations with the former employer.

In **Lithuania**, if the contract of employment is terminated otherwise than at the will of the parties, but without any fault on the part of the employee concerned (e.g. imprisonment, withdrawal of the driving licence due to the breach of traffic regulations, etc.), he or she is entitled to a severance payment in the amount of two monthly average salaries, unless otherwise provided by laws or collective agreements.

The law stipulates a waiting period for the unemployment benefit in certain cases. A former employee is entitled to an unemployment benefit, which is paid after eight days from the registration to the unemployment office, in the following cases of termination of employment: inability to fulfil obligations or to perform work due to the employee's health situation or disability, liquidation of the employer without successor, death of the employer. If a person received a severance payment in case of an *ex lege* termination, the waiting period for the unemployment compensation is one month. If the ground for the *ex lege* termination of the contract of employment was directly linked to the fault on the part of the employee, the waiting period for the unemployment benefit is three months.

In **Romania**, there is entitlement to an unemployment benefit in all cases of ex lege termination of employment, listed in the previous Section except in the following cases: retirement, imprisonment, interdiction to exercise a profession or to perform a job, withdrawal of the consent for minors between 15 and 16 years of age.

In **Slovenia**, 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 is therefore retired and acquires an invalidity pension. Collective agreements also provide for the so called solidarity benefit in case of death of the employee; entitled to it are the close relatives of the deceased.

A person is not entitled to an unemployment benefit in the case a termination of employment is based on a court judgement, if it was reached upon the employee's request not to order the reinstatement.

5.4. Remedies

Disputes arising from the termination of employment by operation of law are settled according to the general rules for the resolution of individual labour disputes as in any other modes of termination of employment (see also Section 4.4.).

5.5. Penalties

In most of the new Member States there are no special provisions on penalties.

In **Lithuania**, penalties may be incurred if violations constitute an administrative or criminal liability, such as, for example, discriminatory action.

In **Slovenia**, 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) 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

Since the termination of employment by operation of law is imperatively regulated by law, there is almost no room for collective agreements to intervene. The possible exception is the regulation of severance payments for the employees. In almost all new Member States collective agreements play no role in relation to the *ex-lege* termination of employment relationships.

In **the Czech Republic**, some collective agreement may contain provisions on severance payments.

In **Slovakia**, collective agreements regulate compensations in case of termination of employment due to illness or medical contraindication.

In **Slovenia**, collective agreements provide for a severance payment to which the employee is entitled in case of termination of employment due to a permanent disability and the so called solidarity benefit in case of death of the employee (see above Section 5.3.).

6. DISMISSAL

Dismissal is one of the central issues of labour law. Dismissal is a termination of an employment relationship at the initiative of the employer, against or irrespective of the will of the employee. In such a case there is an evident need for special legal protection of dependant and economically weaker contractual parties, the employees, whose remuneration represent the main or even single income source for the majority of them and their families. Therefore, gradually, the freedom of the employer when dismissing an employee has been limited in order to adequately protect the interests of the employee. However, legislation also has to consider justified interests of the employers as well as the needs of the respective company and of the changing work processes. Thus, the issue of termination of employment relationship is a matter of – often, but not always – conflicting interests between the need for security of the employees and the need for flexibility of the economic entities and their employment possibilities. Each of the new Member States has found its own *equilibrium* between these two pitfalls of the 'European' labour market model of flexicurity, according to their given circumstances and the desired outcome.

6.1. Introductory overview

In **Bulgaria**, legal regulation of a dismissal is based on the principle of lawfulness of the grounds for dismissal. This means that only the law may determine the valid (lawful) grounds for dismissal; they are explicitly provided for in labour legislation and are exhaustively enumerated in its imperative provisions. No other grounds for dismissal may be provided for in sub-legal regulations, in collective agreements or in contracts of employment.

These grounds form a valid reason for terminating the employment relationship according to international labour law standards. The Bulgarian labour legislation does not define a valid reason by a general clause; it rather specifies this general notion of a valid reason into dozens of separate grounds (since 2005 there are 25 different lawful grounds for a valid dismissal).

The dismissal has to be in writing; an oral dismissal is void. Legal regulation on dismissals is applied to the contracts of employment of both definite and indefinite duration.

In **Cyprus**, a dismissal is considered to be unfair, unless the employer proves the existence of one of the reasons explicitly and exhaustively determined by the labour legislation. These are:

- the employee fails to carry out his or her work in a reasonably efficient manner,
- the employee becomes redundant,
- termination is due to "an act of God or force majeure",
- the contract is for a fixed-term and has expired,
- the employment relationship cannot reasonably be expected to continue (the employee is guilty of gross misconduct, a criminal offence or an immoral behaviour in the course of his or her duties; the employee repeatedly disregards his or her work and duties).

If none of the above mentioned reasons exist, a dismissal is unfair and the employee concerned is entitled to compensation the employer has to pay. However, the employee does not have the possibility to claim for reinstatement.

The employee can qualify for the unfair dismissal compensation only if he or she is less than 65 years of age and has been continuously employed by the employer for not less than 26 weeks (a written agreement may extend the qualifying period of continuous employment up to 104 weeks).
The compensation is calculated in accordance with the law, criteria being the salary, length of service, loss of career prospects, circumstances of the dismissal, and the employee's age. The compensation amounts to a sum not less than what the employee would have received in case of a redundancy (up to a maximum of two years' salary).

The termination of employment relationship by the employee may be considered as a constructive dismissal or termination by the employer within the meaning of the law, if it is a result of the conduct of the employer.

In case of a dismissal, the employer has to respect the prescribed period of notice, except where summary dismissal is allowed. The period of notice is based on the length of continuous service. The notice period is paid by the employer, who may also require the employee to accept payment *in lieu* of notice. During the notice period, the employee has the right to a time-off up to 5 hours a week without loss of pay for seeking other employment. In case of a resignation by the employee, the latter is required to give to his or her employer a minimum notice of one week, if there has been a continuous employment of at least 26 weeks.

The burden of proof rests with the employer.

In **the Czech Republic**, the employer may dismiss an employee with a notice period or without a notice period. A separate possibility is a dismissal during a probationary period.

In **Estonia**, the labour legislation lays down specific grounds, on which employers may dismiss employees. These grounds may be divided into three categories:

- economic reasons:
  - liquidation of the enterprise, agency or other organisation,
  - bankruptcy of the employer,
  - lay-off of employees,
- reasons pertaining to the employee's capacities or personal attributes:
  - unsuitability of the employee for his or her office or the work to be performed regarding professional skills or for reasons of health,
  - unsatisfactory results of a probationary period,
  - long-term incapacity for work of the employee,
- reasons pertaining to the employee's conduct:
  - breach of duties by the employee,
  - loss of trust in the employee,
  - indecent act by the employee,
  - an act of corruption by the employee.

If the employer is not able to prove the existence of one of the listed grounds, the dismissal is unlawful.

In case of a dismissal due to reasons arising from the employee's conduct, the employer has no obligation to provide period of notice and to pay compensation.

In case of a dismissal for economic reasons and for reasons pertaining to the employee's capacities or personal attributes, the employer has to give notice period. The employer's liability to pay compensation to the dismissed employee depends on the basis for a dismissal. A dismissal has to be in writing, stating the reason for the termination of employment. A dismissal cannot be given under condition; it has to be expressed unconditionally.

The failure to observe the notice period or to pay compensation for termination does not render the termination unlawful.

The law does not give an employee the opportunity to defend himself or herself against objections on grounds of his or performance or conduct before the termination of employment. In practice, employees usually do have such an opportunity.

In **Hungary**, a distinction is made between an ordinary dismissal (with notice period) and an 'extraordinary' (summary) dismissal (without notice period). Summary dismissal is possible only in the case of the other party's conduct constituting a grave breach of contract.

In **Latvia**, labour legislation explicitly and exhaustively determines the grounds which can be regarded as valid reasons for a dismissal. The law provides that an employer is entitled to dismiss an employee by a written notice provided it is related to the employee's conduct or his abilities, or is caused by managerial, organizational, technological or similar activities carried out within the undertaking.

In **Lithuania**, there are two main categories of grounds for a dismissal:

- disciplinary grounds (a dismissal without notice):
  - gross breach of work duties (a qualified breach of labour discipline),
  - repeated negligence in the performance of the work duties or the violation of the work discipline if the disciplinary sanction has already been imposed on the employee during the last 12 months (repeated breach of labour discipline),
- grounds which are not related to any misconduct on the part of the employee (a dismissal with notice):
  - significant reasons related to economic or technological grounds such as the restructuring of the workplace, as well as for other similar reasons on the side of the employer (this is the most frequent ground for dismissals),
  - significant reasons related to the qualification, professional skills of an employee, but not related to any misconduct on her or his part (rarely used by employers in practice),
  - specific grounds for certain categories of employees provided by special norms or special acts (fixed-term contracts, including short fixed-term contracts and seasonal workers, probationary period, managers, teachers, bankruptcy proceedings).

There are also numerous procedural requirements as well as statutory guarantees for certain groups of employees.

The court declares a dismissal unlawful if an employee has been dismissed without a valid reason or if a gross violation of the procedural requirements occurred.

In **Malta**, an employer has the right to dismiss an employee, no matter whether such an employee is employed under a fixed-term contract or under an indefinite-term contract. Special rules apply during the probationary period (see Section 8.).

Employees under a fixed-term contract can be dismissed for any reason. A dismissal before the expiry of the agreed term is possible, too, but in this case the employer has to pay to the employee one-half of the full salary (excluding any remuneration for overtime, any forms of bonus, any allowances, and remuneration in kind and commissions) that would have accrued to the employee in respect of the remainder of the time specifically agreed upon. Special rules apply during the probationary period.

In relation to the employment contract for indefinite period of time, the law distinguishes between the following possibilities:

- dismissal during the probationary period,
- dismissal on the ground of redundancy,
- dismissal for a 'good and sufficient cause'.

In **Poland**, there is a distinction between:

- a dismissal with notice and
- a summary dismissal.

In case of a fixed-term contract, no grounds are required for a dismissal with notice. In case of a contract for indefinite period, a dismissal has to be justified by one of the following reasons:

- serious unlawful conduct by the employee,
- the employees' capacities (e.g. failure to adopt to changes arising from new technology or equipment),
- structural, technological, economic reasons (collective dismissal),
- some other substantial reason.

In case of a summary dismissal the employer has to present a substantial ground. A summary dismissal may be justified by a serious violation of the employee's fundamental duties, an evident offence that renders further employment impossible or lack, through the employee's own fault, of professional qualifications. Termination of employment is also possible in case of the employee's prolonged absence from work (one, three or six months, depending on the reason for the absence and seniority of the employee) which may cause difficulties in the organization of work.

The employee's trade union has to be informed about the dismissal. The negative opinion of a trade union (it has to be issued within five days in case of a dismissal with notice and within three days in case of a summary dismissal) does not render the dismissal invalid, yet it enables the dismissed employee to bring an appeal against the dismissal if he/she believes it is unjustified.

In case of an unjustified/illegal dismissal the employee may bring an action before the court and demand reinstatement or compensation.

In Poland, the law does not make a distinction between a dismissal on disciplinary grounds, a dismissal for reasons related to the employee's capacities and a dismissal for economic reasons. The same legal rules apply to all forms of dismissal; the basic distinction between dismissals relates to the question whether there is a notice period or not.

In **Romania**, a dismissal has to be justified, well grounded on the reasons, expressly and exhaustively determined by labour legislation. Besides, the dismissal procedure and formal requirements have to be observed. Dismissals on certain grounds are prohibited. Certain categories of employees enjoy stronger protection against dismissal.

A distinction is made between two categories of dismissals:

- a dismissal for reasons related to the employee
  - if the employee committed a serious violation of his or her duties (disciplinary dismissal),
  - if the employee is taken into preventive custody for a period exceeding 30 days, under the rules of criminal procedure,
  - if, following a decision of the competent medical investigation authorities, physical unfitness and/or mental incapacity of the employee is established, which prevents the latter from accomplishing the duties related to his/her work place,

- if the employee is professionally not fit for his/her job,
- in case the employee meets retirement conditions and he/she did not apply for retirement.

- a dismissal for reasons which are not related to the employee (lay-off due to economic difficulties, technological changes or activity reorganisation; the lay-off has to be effective and have an actual serious cause, a distinction is made between an individual and collective dismissal).

A dismissal has to be in writing. The employer has to observe a notice period, unless the reason of dismissal can be imputed to the employee. The employer cannot pay compensation instead of the period of notice. There is no period of notice in case of a dismissal on disciplinary grounds. The employee has a right to be previously informed about the reason for a dismissal and to be heard in cases of a dismissal for disciplinary grounds, for being professionally unfit and in case of collective dismissals. The principle of *ultima ratio* requires alternatives to a dismissal, less severe disciplinary sanctions, etc. The dismissal is unlawful in case of non-observance of any of the procedural requirements.

In **Slovakia**, the law distinguishes between a dismissal with notice and an immediate (summary) dismissal, which is without notice. Special rules apply during probationary period (see Section 8.). The law exhaustively sets out the grounds for dismissal with notice and no other may be added. Grounds for a dismissal can be divided into:

- economic reasons,
- reasons related to the individual workers concerned and
- disciplinary reasons.

In **Slovenia**, there are two kinds of a dismissal:

- ordinary dismissal (with a period of notice) and
- extraordinary dismissal (i.e. summary dismissal, without a period of notice).

A valid reason justifying a dismissal with notice period has to be demonstrated by the employer. The law distinguishes between three valid reasons:

- 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 without a period of notice 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). The employer has to present the reason justifying such dismissal.

The law also lays down formal, procedural requirements, which the 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

There are some common fundamental principles in all new Member States, prohibiting dismissals on certain grounds and discrimination in relation to the termination of employment relationships. A comparison between Member States is sometimes difficult since different Member States have different approaches towards these issues. In all of the new Member States a dismissal is invalid if it is based on sex, race, colour, pregnancy, trade union activity, nationality or other personal

attributes of the employee. But, there are differences as regards the scope of special protection against dismissal of particular, more vulnerable categories of employees. There are differences as regards the protected categories of employees, the protected periods as well as regards the scope and the intensity of provided special protection against dismissal.

In **Bulgaria**, the following are the prohibited grounds for a dismissal:

- nationality, origin, sex, sexual orientation, race, age, political and religious beliefs, marital and financial status, mental and physical impairments,
- pregnancy, maternity leave,
- participation in a strike.

Besides, certain categories of employees enjoy a stronger protection against dismissal:

- dismissal for economic reason is restricted for employees who are municipal councillors;
- a trade union activist, an employees' representative, a mother of a child under three years of age and employees with reduced capacity for work may be dismissed with notice or for disciplinary reasons only after the employer has received prior consent from the Labour Inspectorate or the respective trade union body.

In **Cyprus**, some dismissals are automatically regarded as unfair:

- for membership, non-membership and participating in the activities of a trade union;
- for taking part in a strike;
- on grounds of pregnancy or maternity leave;
- for having sought, in good faith, to assert a statutory employment protection right;
- for taking, or proposing to take, certain specified types of action on health and safety grounds;
- being a person involved in consultation as an employees' representative.

General prohibition of discrimination on grounds of sex, race and disability also renders a dismissal unfair.

A dismissal which is regarded as automatically unfair cannot be justified by the employer in court. Once it is proven that the reason for a dismissal is one of those mentioned above, the dismissal is automatically unfair. The compensation is the same as in ordinary cases of unfair dismissal.

In **the Czech Republic**, there is a general prohibition of discrimination in employment which is also applied to termination of employment.
Besides, during certain 'protected' periods a dismissal with notice is prohibited:

- temporary work incapacity due to illness or injury and related situations,
- duty in the armed forces or civilian service,
- during the performance of a public office,
- during pregnancy, maternity or parental leave,
- temporary incapacity for night work.

There are certain exceptions to these cases, where a (certain mode of) dismissal is possible also during the protected period.

Summary dismissal of a pregnant employee and of an employee with a child under three years of age is prohibited; in these cases only an ordinary dismissal with notice is possible. However, there is an absolute protection against dismissal of an employee during the maternity or parental leave (neither ordinary nor summary dismissal is possible).

For the protection to be effective, it is of no importance whether the employer knows the ground for the protective period or not.

In **Estonia**, discrimination when terminating an employment contract is prohibited on grounds of sex, racial origin, age, ethnic origin, level of language proficiency, disability, sexual orientation, duty to serve in defence forces, marital or family status, family-related duties, social status, representation of the interests of employees or membership in workers' associations, political belief or membership in a political party or religious or other beliefs. There are also some special provisions on prohibition of dismissal on the grounds of membership of or activity in a trade union, activity as an employees' representative.

Besides, a dismissal is prohibited during certain periods:

- during the employee's temporary incapacity for work,
- during leave of absence, including parental leave and holidays without pay,
- during a lawful strike,
- during performing citizens' duties or during representing employees pursuant to the procedure provided by law or a collective agreement.

The above restrictions are not applied if the dismissal is due to liquidation or bankruptcy.

Restrictions also apply to dismissals that concern contracts with minors, employees' representatives, pregnant employees or employees with a child under three years of age.

In **Hungary**, there is a general prohibition of discrimination which is also relevant in the context of termination of employment: prohibited grounds are sex, racial origin, colour, nationality, national or ethnic origin, mother tongue, disability, state of health, religious or ideological beliefs, political or other beliefs, family status, motherhood (pregnancy) or fatherhood, sexual orientation, sexual identity, age, social origin, financial status, a part-time nature or definite term of the employment relationship, a membership in an organisation representing employees' interests and other personal attributes.

Besides, a dismissal is prohibited during certain 'protected' periods (yet afterwards, when the employee returns to work, general rules on dismissals apply):

- during incapacity to work due to illness, not to exceed one year (with certain exceptions), during leave for caring for a sick child or for a close relative, during leave of absence without pay for the purpose of nursing or caring for children,
- during a treatment related to a human reproduction procedure, during pregnancy and three months after giving birth as well as during maternity leave,
- during army service or civil service.

There is a restriction on a dismissal in case of an older employee, having less than five years to be entitled to a retirement pension; such an employee may be dismissed only in exceptional cases. Dismissal of a trade union representative is only possible after a prior consent of the relevant trade union body.

In **Latvia**, inadmissible grounds for dismissal are:

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

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

There is also a general prohibition of discrimination, based on the employee's sex, race, colour, age, disability, religious conviction, political or other conviction, national or social origin, property, marital status or other circumstances of an employee.

In **Lithuania**, the grounds qualified as unlawful include:

- membership of and activity in a trade union or performance of the functions of an employees' representative at present or in the past,
- participation in proceedings against the employer,
- sex, sexual orientation, race, nationality, language, origin, citizenship and social status, belief, marital and family status, convictions or views, membership in political parties and public organisations, age,
- absence from work when an employee is performing military or other citizens' duties,
- pregnancy, absence during maternity or paternity leave.

Besides, certain categories of employees enjoy special protection during certain periods (limited possibilities for dismissals), for example during pregnancy, maternity, parental leave, employees with a child under three years of age, during performance of the functions of an employees' representative, during temporary absence from work due to illness, accident, citizens' duties, etc. and during disability.

In **Malta**, the following situations are not considered as a good and sufficient cause for dismissal:

- membership of a trade union, performance of the functions of an employees' representative, including candidacy for it and previous performance of functions,
- marital status, pregnancy or absence from work during maternity leave, parental leave,
- disclosure of information, whether confidential or otherwise, to a designated public regulating body, regarding alleged illegal or corrupt activities,
- filing a complaint or participating in proceedings against the employer,

There are some special provisions for part-time employees.

In **Poland**, the following are the unlawful grounds for a dismissal:

- activity as an employees' representative (trade union, works' council, board of directors, non professional labour inspector),
- participation in a legal strike,
- age, race, colour, sex, marital status, sexual orientation, religion, political belief, ideological belief, national or social origin,
- pregnancy, maternity leave, child care during paternal leave;
- absence from work due to military service, civil or political duties, educational leave, holidays, sickness (illness is not a valid ground for a dismissal; however, illness for a lengthy period, such as 9 or 12 months, or repeated illness may be considered as real and serious grounds as it may cause disruption in the organization of work),
- having lodged a complaint against an employer.

Moreover, certain employees may only be dismissed on important grounds (summary

dismissal) and with the prior consent of a relevant organization (e.g. members of the trade union board, the works council, the special negotiation body of the European Works' Council, the Parliament, the Municipal Council, lay judges, boards of professional organizations, legal councillors, non-professional labour inspectors and war veterans).

In **Romania**, the following could never constitute a valid ground for a dismissal:

- sex, sexual orientation, genetic characteristics, age, national origin, race, skin colour, ethnic origin, religion, political option, social origin, disability, family status or responsibility, trade union membership or activity;
- exercise, under the terms of the law, of the right to strike and trade union rights.

Besides, certain categories of employees are protected against dismissal during certain 'protected' periods (during medical leave, during pregnancy, maternity leave, during performance of a trade union representative function, etc.; see also 3.5.).

In **Slovakia**, there is no explicit prohibition of dismissal on discriminatory grounds in labour legislation; nevertheless it is, according to general rules, sanctioned by an absolute invalidity. Besides, the employer may not dismiss an employee during certain 'protected' periods. For example, a dismissal is prohibited – subject to certain exceptions – during temporary work incapacity of the employee due to illness or an accident, during pregnancy or maternity or parental leave, during the leave granted for the performance of a public office, etc.

In **Slovenia**, the labour legislation explicitly states that certain grounds are not valid at all and that a dismissal based on these grounds is unlawful and therefore invalid:

- temporary absence from work due to health reasons or due to family obligations, including maternity, paternity, parental leave,
- claiming employee's rights against his or her employer before a judicial or an other authority,
- trade union membership and activity; exercising employees' rights by participating in the decision-making within the enterprise; candidacy, performance of the functions of an employees' representative in the past or present (trade union as well as elected employees' representatives); participation in a lawful strike,
- race, colour, sex, age, disability, marital status, family obligations, pregnancy, religious and political conviction, national or social origin.

There is also the general prohibition of discrimination, which applies to termination of employment as well, and which prohibits discrimination 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 any other personal circumstances. 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 meet the substantive requirements for one of the valid reasons which are laid down by the law (an economic reason or a reason of incapacity or a reason of misconduct).

Certain categories of workers enjoy special protection against dismissal (workers' representatives, older workers, pregnant workers and workers with family responsibilities, workers with disabilities and workers absent due to illness; see also 3.5.). Special rules aim to provide an effective protection against discrimination for these workers.

6.3. Dismissal on 'disciplinary' grounds

6.3.1. Substantive conditions

In all of the new Member States, a dismissal on 'disciplinary' grounds may only take place if there is a justifying ground (misconduct of the employee, violation of the employee's duties, etc.) and if a period of notice is given. 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 terminates immediately. In some new Member States, a disciplinary dismissal is always a summary dismissal, without notice period (for instance in Bulgaria, Hungary, Malta); in some new Member States there is no period of notice either, but, prior to the termination of employment, a complex disciplinary procedure has to be completed (for instance, in Estonia, Lithuania, Romania, for certain violations also in Latvia). In many of the new Member States the *ultima ratio* rule is implied in legal regulation of this mode of employment termination: for instance, a disciplinary dismissal on grounds related to the employee's conduct is lawful only in cases of a serious breach of the employee's duties, gross negligence, grave misconduct, severe violation, etc.; a disciplinary dismissal is only possible if the justifying grounds are serious enough and make the continuation of the employment relationship between the employee and the employer impossible. Especially in those Member States where a disciplinary dismissal is considered to be the most severe disciplinary sanction and where a special disciplinary procedure is foreseen, prior to a dismissal, other means of disciplinary punishment have to be considered and a dismissal is allowed only if severe circumstances of the particular case justify it.

In **Bulgaria**, a disciplinary dismissal is always a summary dismissal, e.g. without notice period, with immediate effect. It is only possible in case of serious disciplinary violations of the employee (gross non-performance of employee's duties, which considerably injures the interests of the employer). These violations are enumerated in labour legislation: three late arrivals or early leaves from work within one calendar month, each of them being not shorter than one hour; absence from work without a reasonable excuse for two or more consecutive working days; repeated violations of labour discipline; abuse of the employer's trust; disclosure of confidential information relating to the employer; causing damage to third parties, customers; other serious violations. The seriousness of the violation is assessed by the employer, but subjected to judicial control.

Besides a disciplinary ground, there are also some other grounds for a summary dismissal: imprisonment of an employee, which makes it impossible for him or her to carry on the work; an employee loses the right to hold the position or the right to exercise his or her profession; an employee loses the scientific title of degree (university teachers); an employee with reduced capacity to work refuses to accept another suitable job.

In **Cyprus**, a justified reason for disciplinary dismissal is the gross misconduct of an employee, such as a criminal offence in the course of his or her duties, immoral behaviour, repeated disregard of work rules. A justifying reason for a disciplinary dismissal is the employee's failure to carry out his or her work in a reasonably efficient manner. There has to be a serious breach which shows that the employee violates the duty of faith and trust.

The employer has to observe a prescribed period of notice. A dismissal without period of notice is possible in exceptional cases only when the relationship between the employer and the employee cannot continue (for example, in case of a serious

offence by the employee, the commission of a criminal offence, inappropriate behaviour like cursing, lying to the employer, etc.).

Periods of notice are as follows:
from one to less than 52 weeks of employment - one week notice period
from 52 to less than 104 weeks of employment - 2 week notice period
from 104 to less than 156 weeks of employment - 4 week notice period
from 156 to less than 208 weeks of employment - 5 week notice period
from 208 to less than 260 weeks of employment - 6 week notice period
from 260 to less than 312 weeks of employment - 7 week notice period
from 312 and more weeks of employment - 8 week notice period

In **the Czech Republic**, there has to be a justifiable ground for a disciplinary dismissal (one expressly laid down by law), whereby this is a precondition for the validity of a dismissal. The ground for dismissal may not be changed afterwards. Grounds for disciplinary dismissal with notice period are:

- grounds upon which an employer may proceed a summary dismissal,
- serious breaches of work discipline,
- persistent less serious breaches of work discipline if in the preceding six months an employee has been warned in connection with such breaches of the possibility of being dismissed.

The employer has to observe a period of notice of two months. A special rule applies to a subsidiary employment relationship (period of notice in such a case is 15 days). The length of the period of notice is prescribed by labour legislation and it may not be shortened or prolonged, neither by collective agreements nor by individual contracts of employment.

In certain exceptional cases a summary dismissal is possible if:

- the employee has been sentenced for an intentional crime to imprisonment for a period exceeding one year regardless of whether the crime is connected with the job or not,
- the employee has been sentenced to imprisonment exceeding six months for an intentional crime, committed while performing his or her job or in a direct relation to the job,
- in case of the employee's serious breach of work discipline (according to the existing case law "breaching work discipline quite seriously" includes among others: long-term absence from the workplace, theft of property of a greater value, physical attack, drinking alcoholic beverages, etc.).

In all these cases of disciplinary dismissal (with or without notice period) special protection of particular categories of employees does not apply, except in relation to pregnancy, maternity and paternal leave and care for a child under three years of age (see also 3.5. and 6.2.).

In **Estonia**, an employer may dismiss an employee for reasons pertaining to the employee's conduct in the following cases:

- upon breach of duties by an employee,
- upon loss of trust in an employee,
- due to an indecent act by an employee,
- due to an act of corruption of an employee.

The legislation further enumerates particular cases, amounting to these four grounds. The breach of duties has to be severe. Loss of trust may be a consequence of a deficit, damage, theft, etc.

Before the termination of an employment contract, as the severest form of disciplinary punishment, the employer has to consider whether the termination of employment is

justified in the given circumstances or another punishment would be more reasonable (*ultima ratio* rule).

When terminating an employment contract on the above grounds, the employer is not required to observe any period of notice (yet, prior to a dismissal, a disciplinary procedure has to be completed).

In **Hungary**, all disciplinary dismissals are summary dismissals, thus an employer may dismiss an employee without period of notice in the following cases:

- an employee wilfully or by gross negligence commits a grave violation of any substantive obligations arising from the employment relationship, or
- an employee otherwise engages in conduct rendering further existence of the employment relationship impossible.

Dismissal cannot be subject to any conditions.

According to the case-law, a breach of duties arising from the employment relationship may also be the ground for 'a dismissal for reasons in connection with the employee's ability or behaviour in relation to the employment relationship', which is a dismissal with period of notice (since the law does not make a distinction between the different cases within this kind of dismissal the rules applied are the same and are presented in the Section 6.4.).

In **Latvia**, cases justifying a disciplinary dismissal are enumerated in the labour legislation:

- an employee has, without a good (justified) cause, severely violated the employment contract or employment procedures,
- an employee, when performing work, has acted illegally and, as a result, lost the employer's confidence,
- an employee, when performing work, has acted contrary to moral principles and such action is incompatible with the continuation of legal employment relationships,
- an employee, when performing work, has been under influence of alcohol, narcotic or toxic substances,
- an employee has manifestly violated employment protection regulations thereby jeopardising safety or health of other persons.

In practice, the first two grounds are used more frequently than the others. Not any violation of an employment contract or internal employment regulations justifies a dismissal on disciplinary grounds. Each case is examined individually and only where the breach is regarded as a gross violation, the employer's dismissal is found to be lawful. In other cases, an employer has a right to recourse to other means of disciplinary punishment. The employer must consider the gravity of the violation, circumstances in which it has been committed, the employee's personal characteristics and previous work. In case of a labour dispute, these aspects will be examined also by the competent court. A termination of employment can only be applied if a violation was committed while carrying out employment duties. Illegal action outside employment does not constitute a valid ground for termination of the employment relations.

Notice period for disciplinary dismissals is ten days (general rule); for certain violations the law provides for a dismissal with immediate effect. But it has to be born in mind, that the notice period or the immediate effect starts only after the completion of the disciplinary procedure, on the day when the employer issues the disciplinary decision on termination of employment.

In **Lithuania**, a disciplinary dismissal has to be grounded on:

- a gross breach of work duties (a qualified breach of labour discipline);

- repeated negligence in the performance of the work duties or violation of work discipline if a disciplinary sanction had already been imposed on the employee during the last 12 months (a repeated breach of labour discipline).

A gross breach of work duties may involve: improper conduct with the visitors or customers, disclosure of state, professional, commercial or technological secrets, participation in the activities which are incompatible with the functions of work, taking advantage of one's position to get unlawful income, violation of equal opportunities or sexual harassment, theft, fraud, unlawful accepting of a reward, the employee being under the influence of alcohol, narcotic or toxic substances during the working time, etc.

Dismissal is considered as the most severe disciplinary sanction. Although not explicitly prescribed, the principle of 'ultima ratio' is implied in other provisions. The employer has to consider other, less severe disciplinary sanctions and when imposing a disciplinary sanction the employer must take into account the gravity of the disciplinary breach and its consequences, the degree of the employee's guilt, circumstances under which the breach occurred and previous work of the employee.

Disciplinary dismissals do not require a notice period (with no exceptions), but a dismissal is issued only after a disciplinary procedure.

In **Malta**, no distinction is made between dismissals on disciplinary grounds and dismissals on grounds related to the employee's capacities. The law requires a 'good and sufficient cause' for dismissing the employee, yet it does not further define or specify particular cases of disciplinary grounds, particular employee's violations, breaches, etc.; therefore, the case-law is more important in this regard (in labour legislation, only unlawful grounds for a dismissal are laid down).

According to the case-law, the *ultima ratio* rule also has to be respected: a dismissal of an employee for a good and sufficient cause has to be a last resort and the employer has to give more than just one warning to the employee and the opportunity to mend him/herself.

The employer does not have to observe any period of notice.

In **Poland**, a disciplinary dismissal can only take place if there are justified grounds and if a period of notice is given; in certain cases a summary dismissal is possible (for instance, serious offence against employee's duties, criminal offence, loss of professional qualification by employee's fault). If there is no justifying ground, the dismissal is void. There is no legal provision on the *ultima ratio* rule.

Periods of notice are as follows:

- two weeks, if the employee is employed by the employer for less than 6 months,
- one month, if the employee is employed more than 6 months and less than 3 years,
- three months, if the employee is employed for at least three years.

In **Romania**, a disciplinary dismissal is regarded as a disciplinary sanction. It is possible in two cases expressly specified by the labour legislation:

- in case of a serious violation of discipline,
- in case of repeated violations of discipline.

Violation of discipline may occur by breaching the rules of work discipline or those set by the contract of employment, the applicable collective agreement, or the company's rules and regulations. The violation has to be related to the employee's

work. Serious or repeated violations of discipline, justifying a dismissal, are not defined or enumerated in the law. The employer has to consider the seriousness in each particular case, taking into account the following criteria: the circumstances of the violation, the employee's guilt, the consequences of the violation, the employee's general behaviour at work and possible previous disciplinary sanctions.

The *ultima ratio* rule has to be observed, since dismissal is considered to be the most severe disciplinary sanction. According to the doctrine and jurisprudence, the disciplinary dismissal has to be an extreme measure, applicable only if by taking into account all circumstances, it is impossible to continue the employment relationship between the employee and the employer.

There is no notice period in case of a disciplinary dismissal.

In **Slovakia**, every disciplinary dismissal has to be justified. The law defines the ground for a disciplinary dismissal in form of a general clause, it does not specify in detail different violations, breaches of the employee:

- for less serious, but repeated breaches of work discipline the employer may dismiss the employee with notice (a written reminder had to be issued during the last six months),
- for serious breaches of discipline the employer may dismiss the employee either with or without notice (a summary dismissal).

The employer has to observe the period of notice. Minimum periods of notice are prescribed by the law and are the same irrespective of the grounds for the dismissal. The minimum period of notice amounts to two months; for employees with five years of service with the employer or more, the minimum period of notice amounts to three months. For part-time employees with less than 20 hours a week, a 15-day period of notice has to be observed.

In certain cases, a summary dismissal (with immediate effect, without notice) is possible:

- if an employee has been convicted for an intentional criminal offence,
- if the employee has committed a serious breach of work discipline.

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.

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. The law does not specify particular violations, only the general clause is used. An employer may dismiss an employee only, if reasons justifying the dismissal are serious enough and make the continuation of the employment relationship between the employee and the employer impossible (the *ultima ratio* rule).

A minimum period of notice 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.

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 is terminated immediately. The law specifies the cases when summary dismissal is possible, for instance: if the violation has all characteristics of a criminal offence, if an employee intentionally or by gross negligence violates the obligations arising from the employment relationship, etc.

Summary dismissal is also possible in some other cases, not just when a certain disciplinary ground exists (for instance: 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, etc.).

6.3.2. Procedural requirements

In all of the new Member States a written form is required. In many of them, a complex disciplinary procedure has to be followed prior to the disciplinary dismissal, which is then considered as a disciplinary sanction. The right of an employee to defend him/herself is fundamental. There are also time limits in most of the new Member States, within which the employer may dismiss an employee on the ground of a particular violation. In all of the new Member States, the employers have to observe additional procedural or formal requirements in case they want to terminate the employment of certain categories of employees (for instance, a prior consent of the trade union or of the labour inspectorate, etc.). In some new Member States, trade union representatives have a certain role in the procedure (for instance, they have to be informed, can give their opinion, may represent the employee).

In **Bulgaria**, a preliminary procedure has to be followed:

- an employee has to be given the opportunity to defend him/herself (hearing or a written explanation),
- the employer has to examine the violation and assess it as a 'serious' one,
- time limits have to be observed within which a dismissal is possible (two months from the time the employer has been informed; one year from the violation),
- the written order of dismissal has to be issued by the employer (containing also the features and the time of the violation and the grounds for a dismissal) and delivered to the employee (at which time the dismissal takes effect).

If an employee enjoys a special protection against dismissal (pregnant employees, trade union representatives, etc.; see 3.5.), the employer is obliged to demand and to receive a prior authorization from the competent body (regional labour inspectorate or the relevant trade union body).

In **Cyprus**, there are no statutory procedural requirements. According to the case-law, the principles of natural justice are applicable. This means that the case has to be carefully investigated by the employer and the employee should be given the right to be informed of the charges and to have adequate time to present his case.

In **the Czech Republic**, the participation of trade unions in the dismissal procedure is foreseen, either in case of a dismissal with a period of notice or in case of a summary dismissal. The legislation distinguishes between two forms of trade union participation:

- prior consultation (in all cases of dismissal),
- prior consent (if the employee to be dismissed is a trade union official and

during another year after the expiry of his/her office; the trade union has to reply in 15 days and if it does not, it is presumed that a consent is given).

In case of dismissal of an employee who holds office as Member of Parliament, a prior consent of the Parliament's competent body is necessary.

Dismissal has to be in writing and delivered to the employee; if this is not possible, notice by post to the last known address as a registered letter with a receipt suffice. After the delivery, a withdrawal of the dismissal is possible only with the consent of the other party.

In **Estonia**, a disciplinary procedure has to be followed in case of a dismissal for reason of the employee's conduct. The purpose is to ensure that an employee is aware of his or her fault or violation which was the ground for the dismissal, that no punishment is imposed for an act committed in the distant past and that the punishment is fair. A dismissal is unlawful if an employer fails to follow the disciplinary procedural rules. First, a written explanation concerning the offence has to be requested from the employee. There are time limits, since a dismissal as a disciplinary punishment can only be issued within six months after the date of the employee's violation, but not later than one month after the employer was informed about the violation; there are some exceptions and special rules. A disciplinary dismissal has to be in writing, containing among others also the time and a description of the commission of the offence and other circumstances of the case.

There are certain special formal requirements in cases of protected employees (prior consent of the labour inspectorate; see also 3.5. and 6.2.).

In **Hungary**, a dismissal has to be in writing, without any conditions. Time limits have to be observed: 15 days from the date when the employer was informed about the violation and one year from the occurrence of the violation (there are some exceptions allowing longer periods, in certain cases also up to 20 years). No special protection for vulnerable categories of employees applies in this case.

In **Latvia** and in **Lithuania**, a disciplinary procedure has to be followed and the procedural requirements are similar to those in **Estonia**. In the case an employee is a member of a trade union, the employer in **Latvia** is also under obligation to obtain, during the disciplinary procedure, a prior consent from the respective trade union; this rule has some exceptions for certain disciplinary grounds. If the trade union refuses to give its consent, the employment relationship may be terminated by the court; if there is no reply within one week or if the trade union issues its consent, the employer may dismiss an employee within one month. There are some differences as regards protected employees, where a prior consent is necessary.

In **Poland**, before the dismissal the employer has to inform the employee's trade union if the employee is represented by the trade union. The employer has to present to the trade union the grounds for the dismissal and allow the trade union a period of 5 working days (in case of dismissal with notice) or 3 working days (in case of a summary dismissal) in which the trade union can reply and give its opinion.

In cases of employees enjoying a special protection against dismissal (employees' representatives, pregnancy, maternity, etc.) the employer may dismiss a protected employee only if there are justifying grounds for a summary dismissal.

If procedural requirements are not observed by the employer, the dismissal is void.

In **Romania**, before a dismissal a disciplinary inquiry (disciplinary procedure) has to be completed. The law prescribes in detail the duties of the employer in such a case. For instance, the employer has to invite the employee to the hearing in writing, the employee has the right to defend him/herself, to give evidence and his/her interpretations on the issue, the right to be assisted, represented by another person, trade union representative as well. The employer has to observe the time limits within which a dismissal has to be issued (within 30 days from the date he/she became aware of the violation and within 6 months from the date of the violation). A dismissal decision as a disciplinary sanction has to be issued in writing, containing all the prescribed elements, including, for instance, the description of the violation, the reasons for the decision, etc., and it has to be delivered to the employee in order to take effect. If procedural requirements are not observed by the employer, the dismissal is null and void.

In **Slovakia**, a dismissal has to be in writing and unconditional; it has to be delivered to the employee personally. Withdrawal of the dismissal is possible only with the consent of the other party or until it has been delivered to the employee (since it has not yet caused legal effects).

In cases of less serious violations, an employer may dismiss an employee only if such violations are repeated and if she/he has already, during the last six months, issued a written reminder to the employee on occasion of previous violations.

Before a dismissal, the employee has to be informed about the reasons and given a possibility to comment and to defend him/herself.

Time limits have to be observed, too: a disciplinary dismissal can only be issued within the period of two months from the date on which the employer was informed about the violation, but not later than within one year from the violation (there are some exceptions to this general rule). Time limits within which a summary dismissal has to be issued are: one month from the date on which the employer was informed about the violation, but not later than within one year from the violation.

The participation of employees' representatives is foreseen. They have to be notified about a dismissal and consulted with. Employees' representatives have ten days to discuss the case and express their opinion.

Special protection for certain categories of employees has to be observed, but, certain special protection against dismissal is excluded in cases of a disciplinary dismissal (see 3.5. and 6.2.).

In **Slovenia**, prior to ordinary dismissal for the reason of misconduct, the employer must, by a written statement, give a warning to the employee that a dismissal is possible in case he/she repeats the violation.

Prior to a disciplinary dismissal (with or without a period of notice), 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 (excluded only in exceptional cases). Prior to a dismissal, the employer must also – on the 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.

An employer has to observe the time limits for a dismissal: a dismissal is possible 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 (there are some exceptions to this

general rule). In case of a summary dismissal, shorter time limits have to be observed.

Special protection against dismissal for certain categories of employees have to be observed, for instance, in the case of a dismissal of a trade union representative, the consent of the trade union is necessary, etc. (See above 3.5. and 6.2.)

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

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

As a rule, the employee dismissed for disciplinary reasons is not entitled to a severance payment in any of the new Member States. However, there are important differences as regards the entitlement to an unemployment benefit (in some new Member States employees are entitled to this benefit regardless of the reason for the termination of employment relationship, in others employees are not entitled to this benefit due to the fact that the reason for termination was a disciplinary ground). From nearly all new Member States it is reported that there is no special effect to the pension and health insurance, distinct from other ways of terminating the employment relationship (see also above in Section 4.3.).

In **Bulgaria**, a dismissed employee is not entitled to a severance payment; yet, she/he is entitled to an unemployment benefit without a waiting period according to the general rules.

In **Cyprus**, a dismissed employee is entitled to compensation only in case the dismissal was unfair. A dismissed employee is entitled to an unemployment benefit, the waiting period being 3 days (benefit payable on the 4th day of the unemployment), according to the general rules; it cannot exceed 156 working days.

In **the Czech Republic**, there is no entitlement to a severance payment; yet, a dismissed employee is entitled to an unemployment benefit (if he/she fulfils the conditions for it, according to the general rules).

In **Estonia**, an employee dismissed on 'disciplinary' grounds is not entitled to a severance payment. Such employee is not entitled to an unemployment benefit either.

In **Hungary**, a dismissed employee does not have the right to a severance payment.

In **Latvia** and in **Lithuania**, there is no entitlement to a severance payment for dismissed employees, yet they are entitled to an unemployment benefit (if they fulfil the conditions for it, according to the general rules), but the waiting period is longer than in case of other grounds for a dismissal, namely two months in Latvia and three months in Lithuania.

In **Poland**, there is no statutory right to a severance payment in case of a disciplinary dismissal. The right to an unemployment benefit does not depend on the ground of the dismissal, therefore the employees dismissed for disciplinary reasons are entitled to it according to the general rules.

In **Romania**, the dismissed employee is not entitled to a severance payment, unless so agreed by the parties. The employee is not entitled to an unemployment benefit either.

In **Slovakia**, there are no special provisions on the effects of a disciplinary dismissal. An employee is entitled to an unemployment benefit according to the general rules (three years of insurance in the last four years before the unemployment).

In **Slovenia**, the dismissed 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.

6.3.4. Remedies

In all new Member States, employees have the right to bring an action before the court (either the specialised labour court or the ordinary civil law court), if they think that the dismissal was unfair, unlawful, void, just as in any other mode of termination of employment relationship.

In **Cyprus**, an employee may bring an action for unfair dismissal before the Industrial Dispute Court. The action must be brought within one year from the date of dismissal. The employee may also/alternatively bring an action for breach of the employment contract before the civil courts within six years (wrongful dismissal). There is no legal aid for proceedings before the Industrial Disputes Court or civil courts. The burden of proof is on the employer unless the cause of action is a constructive dismissal case in which the employee must prove the reason for the dismissal.

If a dismissal is found to be unfair, the employee is entitled to compensation. The amount depends on the length of service with the employer:

- for 1-4 years of employment, the maximum compensation is 2 weeks' wages for every year,
- 5 up to and including 10 years, 2,5 weeks' wages for every year,
- 11 up to and including 15 years, 3 weeks' wages for every year,
- 16- up to and including 20 years, 3.5 weeks' wages for every year,
- 21- up to and including 25years, 4 weeks' wages for every year.

The Industrial Disputes Court may take into account additional factors. In any event, however, compensation cannot exceed a two year wages in total, wages meaning the last gross wages. Even though the compensation for unfair dismissal awarded by the Industrial Disputes Court may exceed a year wages, the liability of the employer is up to one year. The rest is paid by the Redundancy Fund.

In **the Czech Republic**, the time limit for bringing an action before the court is two years. If the dismissal is found to be invalid, the employment relationship continues to exist if requested so by the employee; the employee is reinstated and has the right to the compensation for the entire period of time as well.

In **Estonia**, the dispute over the validity of a dismissal may be settled by the labour dispute committees and by the courts. Labour dispute committees are extra-judicial independent individual labour dispute resolution bodies which consist of a chairman, one representative of the employees and one representative of the employers. They are not competent to settle disputes over financial claims exceeding 50.000 kroons (approx. 3200 EUR). An action has to be filed within one month after the termination of employment. The committee has to organise a hearing not later than in one month after the filing of a complaint. In labour disputes, the burden of proof is determined according to the general rules of civil law. If the action is successful, the termination is declared unlawful, the employee is reinstated and paid the salary for the entire period; if the reinstatement is not

ordered, the employee is paid a compensation of six months' average salary. If an employee requests so, the court has to order the reinstatement (although in most cases this is rather ineffective, since the employer dismisses the employee immediately after his or her return to work on grounds of a lay-off). The state legal aid is available to employees who are unable to pay for competent legal assistance due to their financial situation.

In **Hungary**, an employee may seek remedy at court, if he/she thinks that the termination of employment on disciplinary grounds was unlawful. In this case, the employment relationship exists further until the final decision of the court, if remedy is granted.

If the lawsuit is successful, the court will normally order reintegration of the employee to the former job. If the employee does not request reintegration or if upon the employer's request the court discharges the employer of his/her duty to reinstate the employee, the court will order payment of compensation in the amount of not less than two and not more than twelve months' average earnings to the employee. In this case, the employment relationship is terminated on the day when the court ruling becomes final. Besides, the employee shall be reimbursed for lost salary (and other emoluments) and compensated for any damages arising from such loss.

In **Latvia**, the employee has a right to bring action to the court within one month. Labour disputes are dealt with by the civil courts of general jurisdiction. In all cases of dismissal the employer always bears the burden of proof, meaning that he/she must prove that the dismissal was legally justified and corresponded to the prescribed procedure.

If the dismissal is found unjustified and therefore unlawful or the procedure for issuing the termination notice has been violated, the court shall declare the dismissal null and void and shall reinstate the employee to her or his former position. In cases where an employee does not want to continue his or her former employment relationship, she or he has a right to request the termination of employment relationship by a court decision. The employer is obliged to compensate the employee's damages caused as a result of unlawful dismissal; it is calculated in the amount of the employee's average remuneration for the whole period from the dismissal onwards.

A state-paid legal assistance is available to those who are unable to ensure protection of their rights, either fully or partially, due to their financial situation and income levels.

In **Lithuania**, the employee may contest the termination of employment and bring his/her case before a civil court of general jurisdiction within a period of one month after the termination of the relationship. Employees may be represented by trade unions or their representatives; a special written or oral authorisation for their representation is not required. They are exempt from the stamp-duty.

Labour disputes are dealt with by the civil courts of general jurisdiction. Nevertheless, there are some special rules with regard to the resolution of individual labour cases in a separate chapter of the Civil Procedure Code. In labour disputes, the court has very wide discretion to protect the employee's interests *ex officio*. In particular, the court may collect evidence on its own initiative, involve a third party in the procedure, decide *extra and ultra petitum,* apply alternative means for the protection of the infringed rights. The law sets short-time terms for the preparation and hearing of the labour case before the court. In 30 days, the case has to be prepared for hearings and a decision has to be made not later than 30 days after the beginning of the hearings. However, in practice courts rarely meet these deadlines. There are also

mandatory rules on interim relief on the prompt reinstatement of the unlawfully dismissed employee into her or his previous job and/or on the award of a salary (such interim relief has to be issued in one day). In practice, the courts make use of this opportunity quite often.

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

The court has to verify the existence of the ground for the dismissal and first of all, assess the conformity of the dismissal procedure to the requirements laid down in the labour legislation and then evaluate whether the disciplinary sanction (dismissal) was imposed by the employer taking into account all necessary criteria (the gravity of the disciplinary breach and its consequences; the degree of the employee's guilt; circumstances under which the breach occurred; previous performance of the employee at work). If the court is of the opinion that the above circumstances were not or were insufficiently taken into account, it may recognise the dismissal as unlawful. The courts make distinction between gross breaches of the procedure, which result in the reinstatement of the employee, and other procedural infringements, which do not invoke the illegality of the dismissal.

If an employee is dismissed without a valid reason or in gross breach of the procedure, the court orders a reinstatement of the employee in her or his previous job and awards him/her the average salary for the entire period from the day of the dismissal until the day of the execution of the court decision. There is a possibility to request compensation instead of reinstatement. The court may decide to terminate the employment relationship and not reinstate at the request of the employee or employer or on its own initiative. If the court finds that the employee cannot be reinstated in the previous job due to economic, technological, organisational or similar reasons, or because she/he may be provided with conditions not favourable for work, the court will pass a decision to recognise the dismissal as unlawful (in this case the employment contract will be considered terminated from the effective date of the court decision) and order to award the employee:

- the average salary for the entire period until the effective date of the court decision and
- a severance pay the amount of which is determined by the length of service of the employee concerned (under 12 months – one average monthly salary, from 12 to 36 months – two average monthly salary, from 36 to 60 months – three average monthly salary, from 60 to 120 months – four average monthly salary, from 120 to 240 months – five average monthly salary, over 240 months – six average monthly salary).

In **Malta**, a dismissed employee who considers such dismissal to be unfair may request the Department of Industrial and Employment Relations (DIER) to intervene in the matter on his behalf. Such intervention usually takes the form of a conciliation meeting.

The employee may file a complaint for unfair dismissal before the Industrial Tribunal within four months from the effective date of dismissal. The Industrial Tribunal may either order reinstatement or reengagement of the employee or the payment of a financial compensation by the employer. In determining the amount of such compensation, the Tribunal shall take into consideration the real

damages and losses incurred by the dismissed employee, as well as other circumstances, including the employee's age and skills as they may affect his or her employment potential.

In **Poland**, an action may be brought before the labour and social security court within seven days in case of a dismissal with notice and within two weeks in case of a summary dismissal. The right to bring an action before the court by the dismissed employee does not depend on whether a trade union protested against the dismissal or not. Trade unions may help employees either by starting legal action on behalf of a dismissed employee regardless of the employee's membership, or by helping the employee to pursue the case. An employee may be represented before the labour court by the trade union representatives. In theory, all labour disputes must be given priority treatment; in practice though, there is no priority. The burden of proof rests with the employer. The lawsuit will succeed if the employee's rights, either substantive or procedural, are impaired by the dismissal.

If there is no justifying ground, the dismissal is void. The dismissal is void, too, if procedural and formal requirements were not met (for example, if the required prior consent is missing, etc.). In case of a successful lawsuit, the court may order the reinstatement of the unlawfully dismissed employee to the previous position with back payments or it may order compensation instead of reintegration. If the dismissed employee does not bring an action before the court within the prescribed time limits, the dismissal is considered valid and effective.

In **Romania**, a dismissed employee may contest the dismissal as being unlawful or ill-founded before the court for labour and social affairs within 30 days from the date the dismissal was communicated to him/her. The trade union may act on the behalf of the employee, unless the employee either opposes or renounces its services. In such cases, the trade union does not need a power-of-attorney. The burden of proof rests with the employer.

In **Slovakia**, an action may be brought before the court within two months. Disputes over termination of employment are heard and decided by civil courts of general jurisdiction. In disputes over termination of employment the employees are exempt from duty to pay court-fees.

A basic precondition for enforcing a claim arising from an invalid termination of employment is the prior notification whereby the employee notifies the employer that she/he insists on continuation of the employment. If it is proven that an employment relationship was terminated unlawfully, the court determines in its judgment that the termination of the employment relationship is invalid and that the employment relationship continues; the court also awards compensation to the employee.

A different situation arises when, although the termination of employment relationship was invalid, the employee does not insist on his continued employment. In this case the employment relationship is deemed to have been terminated by mutual agreement and the employee is entitled to compensation only.

In **Slovenia**, 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. The state legal aid system is available for persons with low income. In disputes concerning the termination of employment, the court is obliged 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 the reinstatement of the employee and payment of the salary he or she would have earned had there not been illegal termination of employment. There is also a possibility that the court orders payment of compensation instead of the reinstatement. The 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

In general, most of the new Member States do not offer the employee a possibility to benefit from the suspension of the effects of the dismissal before the end of judicial proceedings. There are two exceptions.

In **Poland**, there are no specific suspension procedures in labour law matters, but general civil law rules on interim relief may be applied in labour law cases, too. In practice, labour courts are reluctant to issue an interim order which imposes an obligation addressed to the employer to reengage the dismissed employee, as long as the court proceedings are going on.

In **Slovenia**, 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.

Further to that, the labour legislation provides for a possibility to suspend the effects of a dismissal for the time before the court reaches a decision on the issuing of an order of interim relief. A suspension of the effects of the dismissal is possible also in case of dismissals on disciplinary grounds. The following conditions have to be fulfilled:

- the employee's request to suspend the effect of a dismissal,
- the trade union which was (on the employee's request) informed about the intended dismissal and opposed to the dismissal by a written statement.

That means that a suspension of the effects of the dismissal until the court's interim relief is possible only, if the employee is a trade union member, if he/she requests that the 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

In most of the new Member States the reintegration of an unlawfully dismissed employee is the main remedy ordered by the court in case of a successful lawsuit contesting the validity of the dismissal. This is the case in Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and in Slovenia. In most of these Member States, however, the labour legislation provides for a possibility that, although the employee requested so, the reinstatement is not ordered and the employer is only liable to pay compensation to the employee (the Czech Republic, Hungary, Lithuania, Poland, Slovenia). There are important differences between the Member States as regards the conditions to be met for this possibility to take effect and as regards the time and mode of termination of employment in such cases. See also Section 6.3.4. In **Malta** and **Romania,**

the main remedy is compensation, but there is also a possibility of reinstatement. Absolutely different principles apply in **Cyprus**, where the main remedy for unfair dismissal is compensation (see Section 6.3.4.), whereas the theoretical possibility to order reinstatement has yet not been used and there is no reported case so far that reinstatement was ordered by the courts.

In **Bulgaria** and **Estonia,** the reinstatement is the only possibility and has to be ordered if the employee demanded it.

In **Hungary**, although the reinstatement is the main remedy, there are certain cases, where reinstatement is not possible due to various reasons, for instance, if the previous job does not exist any more, if the trust between the parties has been undermined, etc. In such cases, at the employer's request, the court does not order reinstatement of the employee in his or her original position, but grants compensation instead.

However, there are cases in which reinstatement in the original position is mandatory (if this is requested by the employee) and the employer cannot avoid this remedy: for example, in the case of violation of the principle of equal treatment, in the case of a special protection against dismissal.

If the reinstatement is not ordered by the court (because the employee has either not requested it or the employer requested to be exempt from this obligation), it orders the employer to pay a sum of not less than two and no more than twelve months' average earnings of the employee. In this case the employment relationship terminates on the day the court ruling becomes final.

In **Latvia**, reinstatement is mandatory in case of unlawful dismissal and the employer's consent is not necessary. The employer may not excuse him/herself by referring to the fact that another employee is employed in the position or that the relevant job does not exist any more. It is interesting that the reinstatement of the former employee to the previous job serves as a sufficient ground to terminate the employment relationship with the new employee performing this job until the reinstatement.

In **Lithuania**, although the reinstatement is the main remedy, the court may – at the request of the employee or employer or on its own initiative – decide to terminate the employment relationship and not to order the reinstatement. The court shall reach such decision if it finds that the reinstatement is not possible due to economic, technological, organisational or similar reasons, or because the employee may be provided with conditions not favourable for work. In this case, the court will pass a decision to recognise the dismissal as unlawful and order to pay severance payment to the employee as well as average salary for the entire period before the court judgement. The employment contract shall be considered terminated from the effective date of the court decision.

In **Malta**, the main remedy is compensation, but if explicitly requested by the employee the reinstatement may be ordered, too, if other conditions required are met. In this regard the decisive question would be, if the reinstatement is practicable and in accordance with equity. The interests of both parties shall be taken into account. If the complainant is employed in managerial or executive jobs, the reinstatement will not be ordered.

In **Poland**, although the reinstatement is the main remedy, the dismissed employee may opt for compensation which cannot be higher than a 3-month salary. Besides, the labour court itself may decide that the reinstatement of the dismissed employee is either impossible or pointless; however, the court does not have this possibility in cases of employees who

enjoy special protection. The court is bound by the claim to reinstate the employment relationship brought by any employee with special protection, such as members of a trade union board, members of a works' council, pregnant women, employees on maternity and parental leaves of absence, etc.

In **Romania**, the reinstatement may be ordered by the court only if the employee expressly requested so.

In **Slovakia**, the main remedy is reinstatement. If the employee does not insist on his continued employment, the employment relationship is deemed to have been terminated by mutual agreement and the employee is only entitled to compensation.

In **Slovenia**, reinstatement is the main remedy and is ordered by the courts as a rule. The reintegration can be avoided, if the court establishes that the continuation of the employment relationship would no longer be possible. The court may reach such a decision upon the employee's request or without it. In such a case the court decides that the employment relationship existed until the first instance judgement and determines the date of the termination of employment relationship.

6.3.7. Penalties

In general, the labour legislations in most of the new Member States stipulate different penalties for administrative or criminal offences in relation to the breaches of legal provisions on dismissal. There are some new Member States, where there are no special provisions on penalties for violations in relation to dismissal.

In **Cyprus**, if an employer fails to reinstate an employee when ordered to do so by the court, he or she may face contempt of court order proceedings which may lead to imprisonment or a fine or both.

In **Latvia**, the law stipulates liability for breach of legal provisions governing employment relationships, the fine imposed on the employer being up to 250 LVL for employers – private individuals (approx. 350 EUR) or 500 LVL for employers – legal entities (approx. 700 EUR).

There is also criminal liability for an intentional failure to execute a court judgement (e.g. ruling on reintegration of the employee), the monetary penalty being up to 60 minimum wages (around 5400 LVL, e.g. 7.600 EUR).

In **Lithuania**, there are no special provisions on penalties for the violations of the employer in connection with a dismissal. Only the violation of an equal treatment principle can be a ground for administrative or criminal liability.

In **Malta**, there is a general provision imposing on the employers a fine of not less than 100 MTL (approx. 230 EUR) and not exceeding 1000 MTL (approx. 2330 EUR) for any breach of the conditions of employment laid down in the employment legislation.

Certain violations, mostly related to the payment of the salary and other remunerations, including bonuses, holiday pay, etc., are taken so seriously that the court may, at the request of the prosecution, besides imposing the punishment stipulated by law, order the offender-employer to refund or pay to the employee(s) concerned the said amount due by the employer. Such order by the court shall be of the same force and effect and executable in the same manner as if it had been given in a civil action duly instituted between the employer and the employee.

In **Poland**, an employer may be fined for offence where he or she ignores the legal regulations concerning either ordinary or special protection rules in relation to job

security. Therefore an employer may be sentenced:

- for failure to send a copy of the dismissal proposal to the trade union,
- for not delivering a written copy of the dismissal to the employee concerned, or
- for failure to state the real and sound grounds justifying a dismissal.

The fine imposed may amount to 5.000 PLN (1.250 EUR).

The employer who refuses to reinstate an employee, whose dismissal had been declared null and void by the labour court, may be fined by the civil court; there is no upper limit for this pecuniary fine.

In **Romania**, the labour legislation stipulates that the employer may be imprisoned or sentenced to pay a penalty if he or she refuses to observe the reinstatement of an employee ordered by final decision of the court.

In **Slovenia**, 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 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 employee, a pregnant employee, an employee with family responsibilities, an employee with disabilities.

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

In general, collective agreements do not play a very important role in relation to the disciplinary dismissals. In some of the new Member States collective agreements include a few provisions on certain aspects of the preliminary disciplinary procedure or define (enumerate) more precisely the cases which may be considered as a serious violation.

In **Bulgaria**, collective agreements contain provisions on the amount of compensation for unlawful dismissal.

In **Cyprus**, some collective agreements contain provisions on compensations paid to the employee in case of dismissal which are more favourable than the statutory rights.

In **the Czech Republic**, collective agreements do not regulate termination of employment at all.

In **Estonia**, collective agreements sometimes list the severe breaches of the employee's duties justifying a summary dismissal.

In **Latvia**, some collective agreements provide for a longer period for notice.

In **Lithuania**, there are no collective agreements containing rules on termination of employment.

In **Poland**, collective agreements in general do not provide for rules on issues related to dismissals. In very exceptional cases there are more favourable provisions on the period of notice.

In **Romania**, there are some provisions in collective agreements defining more precisely serious violations of discipline and some

provisions in relation to the preliminary disciplinary procedure.

In **Slovenia**, some collective agreements include provisions on certain aspects of 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

6.4.1. Substantive conditions

In all new Member States this kind of dismissal requires a justifying reason and a period of notice. A comparison between Member States is sometimes difficult, since there may be quite important differences as regards the question which factual events fall under the notion of this kind of dismissal (for instance, a particular event may be regarded as a justifying reason for this kind of dismissal in one Member State and as a ground for *ex lege* termination, with completely different rights and protection for the employee, in the other).

In **Bulgaria**, for this kind of a dismissal the employer has to give notice and he/she has to prove the existence of the lawful ground justifying the dismissal.

Periods of notice are different for contracts of employment for indefinite period (the minimum period of the notice is 30 days, the parties may agree upon a longer period of notice, however, it may not exceed three months) and for fixed-term contracts of employment (three months). After communicating the letter of dismissal to the employee, the dismissal may be withdrawn only with the consent of the employee. Prior to the expiry of the period of notice, the employer as well as the employee may terminate the contract of employment (for example, the employee has found another job); in such a case the party who terminated the contract is liable to pay compensation in the amount of the employee's gross remuneration for the rest of the notice period.

Grounds, justifying a dismissal, which are related to the employee's personal capacities or attributes:

- lack of capacities for the performance of work,
- lack of the required education,
- lack of the required professional qualification.
- reinstatement of an unlawfully dismissed employee to the job, which was after his/her dismissal occupied by another employee (the latter may be dismissed),
- early discharge from the compulsory military service of the employee whose job was during his absence occupied by another employee (the latter may be dismissed upon the return of the former),
- entitlement to a retirement pension,
- change in the requirements regarding the performance of work, which the employee does not fulfil any more,
- objective impossibility to perform the obligations rising out of the contract of employment (for instance, prohibition of a certain profession, imposed by the sentence; etc.).

In **Cyprus**, no distinction is made in the legislation between dismissals on disciplinary grounds and dismissals on grounds related to the capacities or personal attributes of the employee. A justified reason for a dismissal is given when the employee does not perform his/her duties in a reasonable manner, excluding the cases where the inability to perform the duties reasonably is attributed to illness, accident or because of pregnancy. Non-performance of the duties in a 'reasonable manner' has been deemed to include dismissals on grounds relating to the capacities or the personal attributes of the

employee. In either case, the rules of dismissal are the same (see Section 6.3.).

In **the Czech Republic**, the grounds for this kind of a dismissal are as follows:

- the 'health reason',
- grounds in relation to qualifications for performing work.

The health reason occurs "if the state of the employee's health is such, according to the opinion of a medical expert or a ruling of the state health administration authority or social security authority, that the employee is no longer able in the long-term to perform his existing work, or the employee is not permitted to do the work because he or she suffers from an occupational disease or faces the danger of such disease, or, according to a ruling of the competent public health protection authority the employee has been subjected at the workplace to the maximum permissible level of exposure". The ground for dismissal in this case can be found only in the long-term incapacity. Contrary to that, an employee, incapable to work only temporarily, is protected by the prohibition of being given notice of termination. The evaluation of the (in)capacity for work is done according to the regulations relating to health insurance and pension insurance.

The *Ultima ratio* rule applies in this case: an employer has the duty to transfer an employee to other work, or even to work of a different kind from that agreed upon by the employment contract. Only in case that the employer cannot provide such work because it does not exist, the dismissal is lawful. According to the doctrine, the freedom of work should be guaranteed; therefore, an employee can always refuse to perform work not agreed upon and if so, the dismissal follows.

Another ground justifying a dismissal occurs "if the employee does not meet the prerequisites laid down in statutory provisions for performance of the agreed work (job), or if, through no fault on the employer's part, the employee does not meet the requirements for proper performance of such work". If the employee's failure to meet these requirements is the result of unsatisfactory work, the employee may be dismissed for this reason only if, during the previous 12 months, the employer called upon him or her in writing to eliminate the defects in the work, and the employee failed to do so within a reasonable period of time. It makes no difference whether non-compliance with the requirements existed already at the time when concluding a contract of employment or it occurred later during the employment (withdrawal of a driving licence). It makes no difference whether an employee fails to meet these prerequisites because of her/his fault or not. This ground justifies a dismissal only if the employer is not responsible for such situation.

There is a general *ultima ratio* rule establishing the employer's duty to offer another suitable job to the employee. This is a precondition for the validity of a dismissal. A dismissal is lawful only if the employer may prove that she or he does not dispose of such work or if she/he offered such work to an employee and the latter refused it. The 'suitability' of the work offered should be considered in a way as to take into account also the state of health, abilities of the employee, as well as the employee's qualification. The offer of another job may even be connected with preceding training (if not unreasonably costly).

The employer may dismiss the employee only if:

- the employer does not have the possibility of employing the employee at the place agreed as place for the performance of work, nor at the place of his residence even after the previous training and

- the employee is not willing to be transferred to another work suitable for her/him and offered at the place agreed as the place for the performance of work, or in her/his place of residence, or to undergo previous training for such work.

The period of notice is two months.

In **Estonia**, an employer may dismiss an employee for reasons pertaining to the employee's capacities or personal attributes in the following cases:

- unsuitability of an employee for his or her job due to lack of the professional skills required or for reasons of health,
- unsatisfactory results of a probationary period (see Section 8.),
- due to the long-term incapacity of an employee for work.

The notice period and the payment of compensation depend on the ground for the dismissal.

Unsuitability occurs when the employee's abilities, skills, knowledge, etc. are inadequate for duly performing his or her duties (e.g. insufficient work skills, insufficient language or communication skills, deterioration of health, lack of documents necessary for performing work, such as a driving licence, a qualification certificate, etc.).

Following the equal treatment principle, it is no longer possible (from 4 March 2006) to terminate employment contracts due to an employee's age (earlier, employers could dismiss persons who reached 65 years of age and were eligible for a state retirement pension).

The employer is required to organise at his/her expense vocational training necessary to acquire and to retain professional skills in a changing world. The termination of an employment contract due to an employee's unsuitability depends on whether the employer had organised training and on the results of the training. The employer has to offer to the employee another position before he/she can dismiss the employee due to unsuitability. These are certainly the aspects of the *ultima ratio* rule.

The employer is required to give the employee at least one month's notice period or to pay compensation in the amount of the average daily wages to the employee for each working day short of the period for advance notice.

Long-term incapacity for work justifies a dismissal if:

- the employee has been absent from work due to incapacity for work for more than four consecutive months (eight months in the case of tuberculosis),
- the employee has been absent from work due to incapacity for work for more than five months during a calendar year (eight months in the case of tuberculosis).

An employer may dismiss an employee due to long-term incapacity for work only during the time of the employee's incapacity. When an employee started working again, dismissal on this ground is not possible any more.

An employer may not dismiss an employee who is temporarily incapable for work due to a work injury; the job has to be maintained until his or her recovery or until the disability is established.

In case of long-term incapacity, the period of notice is two weeks. If the employer does not comply with this notice period, he or she is liable to pay compensation in the amount of the average daily wages to the employee for each working day short of the period for advance notice. A failure to give advance notice of a dismissal does not render the dismissal unlawful.

In **Hungary**, an employee may be dismissed with notice based on his/her ability or

behaviour in connection with the employment relationship. The law does define this reason for dismissal more precisely without specifying particular cases which could be subjected to it. A distinction is only made between:

- the ability of the employee and
- the behaviour of the employee.

According to the case-law, this reason for dismissal occurs in case of qualitative change, incapability, cessation of confidential relation (loss of confidence), a refusal of change over to a new form of responsibility, breach of duties arising from employment relationship, etc.

This kind of dismissal (so-called ordinary dismissal) is a dismissal with a period of notice. Minimum periods are provided for by labour legislation. According to the law, the minimum period of notice is thirty days and the maximum is one year. The thirty-day notice period is extended:

- by five days after three years of employment at the employer,
- by fifteen days after five years of employment at the employer,
- by twenty days after eight years of employment at the employer,
- by twenty-five days after ten years of employment at the employer,
- by thirty days after fifteen years of employment at the employer,
- by forty days after eighteen years of employment at the employer,
- by sixty days after twenty years of employment at the employer.

During the notice period the employee is entitled to a time-off for finding a new job (an employee is relieved from his or her duties for at least half of the duration of the notice period, by his/her choice).

Prior to a dismissal for reasons of the employee's work performance or conduct the employer is obliged to give to the employee the opportunity to defend him/herself, except such opportunity cannot be expected in view of all circumstances of the particular case.

There are special rules for the so-called 'pensioners': the employees who are eligible for a pension (old-age pension, invalidity pension and other types of pensions) and other pension benefits of the same character as the old-age pension. In this case the employer is not obliged to give reasons for a dismissal. An ordinary dismissal is valid even if the employer does not justify it; the employer just has to observe the period of notice.

In **Latvia**, the employer may dismiss an employee in the following cases where the reasons are related to the employee's capacities or personal attributes:

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

Since, it is the employer who has to prove the existence and validity of the ground for the dismissal, which is not a straightforward task in this case, it is not very usual for employers in Latvia to use the first ground for justifying the dismissal.

Temporary inability to perform the work does not qualify as a ground for dismissal. It is only the permanent inability to perform the work which justifies the dismissal. The employer has to ensure the possibility of a medical examination for the employee. It might also be the case that the employee him/herself submits a doctor's statement concerning the inability to perform the work and thus informs the employer about the ground for the termination of employment relationship. Submitting such a statement may not be considered as a resignation by the employee, rather the employer is obliged to proceed with the

dismissal (which requires a severance payment).

The period of notice in these two cases is one month.

In **Lithuania**, the labour legislation provides that the contract of employment may be terminated on significant grounds related to the qualification, professional skills or conduct of an employee without any fault on the part of the employee concerned. The termination of the employment relationship on the above ground is formally and practically regarded as an economic dismissal with a notice. Accordingly, all rules concerning redundancy are fully applicable (see Section 6.5.).

Employees, who have lost their functional capacity as a result of injury at work or occupational disease retain their job until they recover their functional capacity or become permanently disabled. An employment contract may be terminated on the initiative of the employee with a period of notice (according to the rules applicable in case of redundancy) only after the disability of the employee is established by a competent authority.

Employees who have become temporarily incapable to work for other reasons retain their job if the temporary absence lasted not more than 120 successive days or not more than 140 days within the last 12 months (there are some exceptions with longer periods). For other questions on dismissal regarding illness of the employee see Section 6.5.

In **Malta**, according to the case-law, no distinction is made between a dismissal on disciplinary grounds and a dismissal on grounds related to the employee's capacities and therefore the same rules apply (see Section 6.3.). There is a general rule that an employer may dismiss an employee if there is a good and sufficient cause for doing so; in such case there is no need to give notice. According to the case-law, the dismissal of an employee for a good and sufficient cause has to be a last resort.

If incapacity for work is due to an accident at work or an occupational disease the employer may dismiss such employee only with her or his consent. On cessation of such incapacity for work the employer has to, within twenty-one days from an application made by the employee, reinstate the employee in her/his former employment or, if the injury or disease has caused a disablement rendering the employee unfit for the former employment, in an other suitable employment. The employee must apply for reinstatement in writing within seven days from the cessation of the incapacity for work.

Special protection in relation to pregnancy and maternity has to be observed.

In **Poland**, the law does not make a distinction between a dismissal with notice for disciplinary reasons, for reasons related to the employee's capacities and for economic reasons. The same legal rules apply to all modes of dismissal; the basic distinction between dismissals relates to the question whether there is a notice period or not.

In case of a dismissal, the law requires that the 'just cause' is presented and the period of notice is given by the employer.

The notion 'just cause' is not defined in detail by the law, neither are particular cases which may be subjected to this notion specified in the legislation. According to the case-law, the following are some of the justifying grounds for the dismissal with notice:

- insufficient performance at work;
- inability to perform work because of illness, if it results in a considerable burden for the employer;

- lengthy absence from work if the functioning of the undertaking is disturbed;
- not excused absence from work;
- employee's inaptitude;
- employee's failure to adopt to technical changes;
- employee's inability to perform his duties.

The capacity or personal attributes of an employee may be used as a ground for a dismissal with notice, provided that the employer does not discriminate against his/her employees.

Among reasons justifying a summary dismissal there is one which cannot be attributed to the employee's fault: absence from work due to illness or other excused reasons for certain longer period determined by the law (one, three, six or nine months, depending on the reason) which makes the employer's organization of work difficult.

Periods of notice are as follows:

- two weeks, if an employee has been employed by the employer for less than 6 months,
- one month, if an employee has been employed more than 6 months and less than 3 years,
- three months, if an employee has been employed for at least three years.

In **Romania**, reasons related to the employee's person other than disciplinary reasons, which justify a dismissal are as follows:

- an employee is taken into preventive custody for a period exceeding 30 days (imprisonment as s criminal punishment ordered by the court causes ex lege termination of employment),
- the employee's physical and/or mental incapacity (a decision of the competent medical investigation authorities is necessary),
- if the employee is professionally not fit for his or her job (when the employer evaluates the employee's work, the professional knowledge, abilities, performance and activity of the employee has to be taken into account; the employer has to observe a previous evaluation procedure, which is prescribed by collective agreements or, if there is no collective agreement regulating this issue, by company's rules and regulations)
- if an employee fulfils the conditions for an old-age pension (employment contract is ex lege terminated on the date the decision of retirement is communicated; if an employee alone does not apply for a pension, he/she is entitled to, the employer has a possibility to dismiss an employee, but only in case the employee fulfils the conditions for a full old-age pension, not in case of early retirement, for example).

In the second and third case a period of notice has to be observed, which cannot be less than 15 working days (employees with disabilities have the right to benefit from a notice period of minimum 30 working days). No period of notice has to be observed in case of professional incapability established during the probationary period.

The *ultima ratio* rule applies in the second and the third case: The employer is obliged to offer to the employee whom he/she intends to dismiss another suitable job if there is any. Such an offer has to be made before the issuance of the dismissal decision. If the employer does not observe this obligation, the dismissal is null and void. The employee has to reply (in writing) within three working days from the date of the employer's offer. If the employee does not state his/her consent within the period stipulated, as well as if he/she refuses the employer's offer, the employer can order the employee's dismissal. If the

employee accepts the employer's offer, the contract of employment is modified and continues to exist between the parties. If the employer has no vacant suitable job in the company, she or he is obliged to ask the employment agency for support in finding another job. If the employer does not observe this obligation, the dismissal decision is null and void.

If the employer dismisses the employee because he/she fulfils the conditions for an old-age pension, the dismissal decision may be issued any moment after the date the employee meets such conditions (before the employee alone applies for retirement on her/his own initiative ; then the employment will be terminated automatically when the decision on pension is communicated).

In **Slovakia**, the employer may dismiss the employee in case of long-term loss of the employee's work capacity. Either a medical opinion or a decision of a public health authority is necessary. The loss of more than 70% of work capacity can be considered as a long-term inability for work. In case of the loss of less than 70% of work capacity, the dismissal is possible, if the continued performance of the employee's work would require the adaptation to special conditions that the employer is unable to ensure. The employer has to observe special protection of certain categories of employees (prohibition of dismissal during the protected periods; see also 3.5. and 6.2.). According to the *ultima ratio* rule, the employer is obliged to offer the employee another suitable job. In certain cases, the employer is even obliged to secure the employee a new adequate job (for instance, in case of a risk for an occupational disease; in this case the notice period expires only after a new adequate job is secured). A dismissal of an employee with disabilities requires a prior consent of the Office of Labour, Social Affairs and Family.

The law provides for additional reasons for dismissal, which are in relation to the employee's person:

- an employee fails to meet the statutory requirements for the performance of the agreed work,
- an employee fails to meet, without the employer's fault, the requirements for proper performance of work as defined in the employer's internal rules, or
- an employee fails to properly fulfil the work duties and, although the employer has urged him in writing during the last six months to remedy the deficiencies, the employee did not do so in due time,
- an employee, elected or appointed to a managerial position, has ceased to meet the necessary requirements.

The employer has to observe the period of notice. The minimum periods of notice are prescribed by law and are the same irrespective of the grounds for the dismissal. The minimum period of notice amounts to two months; for the employees with five years of service with the employer or more, the minimum period of notice amounts to three months. For part-time employees with less than 20 hours a week, a 15 days' period of notice has to be observed.

In **Slovenia**, the law makes a distinction between dismissal for reason of misconduct, incapacity or economic reasons. Many provisions are the same for all kinds of dismissal.

A dismissal for reason of incapacity is defined 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 as stipulated by laws and other regulations due to which the employee fails to fulfil or cannot fulfil the obligations arising from the employment relationship".

For a valid dismissal in such a case, the employer has to present a justifying reason and observe a period of notice.

An employer may dismiss an employee only, if reasons justifying the dismissal are serious enough, so as to make the continuation of the employment relationship between the employee and the employer impossible (*ultima ratio* rule). 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 for the employee. 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 she or 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. The obligation to check for alternatives to the dismissal does not apply if the employee has been employed by the employer for less than six months and if the employer is a small employer, employing up to ten employees.

There are 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 time limits the particular ground can no longer be considered as a valid reason and cannot justify a dismissal any more.

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

In **Bulgaria**, for certain categories of employees the law provides for special protection against a dismissal: a prior permission/consent, issued by the labour inspectorate (for a dismissal of a pregnant women, mothers with a child under 3 years of age, employees with reduced capacity for work, etc) or by the trade union (for a dismissal of a trade union representative) has to be acquired. A dismissal without prior permission/consent is unlawful and thus invalid. If challenging such a dismissal before the court, the latter may order the reinstatement of the dismissed employee.

The dismissal has to be in writing and delivered to the employee.

In **Cyprus**, no special formal requirements are prescribed by the law.

In **the Czech Republic**, a special protection against dismissal has to be observed in certain cases, for certain categories of vulnerable employees (see 3.5. and 6.2.); besides, all other procedural and formal requirements have to be met, which are, with few

exceptions, the same as in the case of a dismissal on disciplinary grounds (see 6.3.2.).

Besides the requirements which are the same as in the case of a disciplinary dismissal, the employer has a duty to assist the dismissed employee in seeking other suitable employment. This requirement must not be confused with the duty to offer another suitable job (which is one of the substantive conditions – see Section 6.4.1.). The employer is expected to cooperate with the competent state administrative authority but other ways may be used as well, e.g. personal links with other employers. To comply with this duty, it is not necessary for the employer to find a new employment for the dismissed employee; it is sufficient if the employer takes measures to assist the employee (e.g. establishing contacts, negotiation with the Labour Office, etc.). Performing this duty does not have any influence upon the running of the notice period either. The employment relationship terminates upon the expiry of the notice period irrespective of whether the employer's assistance resulted in obtaining another job or not. This employer's duty ceases if the employee refused another suitable job which the employer had offered him before the dismissal.

In **Estonia**, a written notice of dismissal is prescribed. It must also contain the reasons justifying the dismissal.

A dismissal due to an employee's unsuitability is prohibited if the employee is pregnant or raises a child under three years of age. Before dismissing a representative of employees or a minor, an employer has to obtain a labour inspector's consent.

An employer is not allowed to dismiss an employee due to the employee's long-term incapacity for work, pregnancy or raising a child under three years of age.

In **Hungary**, a dismissal has to be made in writing and it has to include its justification. The reason for the dismissal must be clearly indicated in the written notification; if not, the court declares the termination of employment unlawful. The justification may comprise of the description of the actual facts and circumstances on which the dismissal was based. Since a dismissal is valid only if it is made in writing, the court only takes into consideration the reasons indicated by the employer in the written letter of dismissal. An additional oral justification of the dismissal is relevant only within the framework of the written justification.

In **Latvia**, the involvement of employees' representatives in the dismissal procedure is foreseen. In case an employee is a member of a trade union, the employer is under obligation to obtain a prior consent from the respective trade union. If the trade union refuses to give its consent, the employment relationship may be terminated by the court; if there is no reply within one week or if the trade union issues its consent, the employer may dismiss an employee within one month. There are some differences as regards protected employees, where a prior consent is necessary.

A dismissal has to be in writing and it has to state and substantiate the reasons for the dismissal.

In **Lithuania**, since a dismissal on grounds related to the qualification, professional skills or conduct of an employee without any fault on the part of the employee concerned is formally and practically regarded as an economic dismissal with a notice, the same rules as in the case of redundancy apply (see Section 6.5.).

In **Poland**, a dismissal has to be in writing and delivered to the employee before the period of notice starts. It has to state the grounds for the

dismissal and the date of the termination of employment.

Before the dismissal, the employer has to inform the employee's trade union if the employee is represented by a trade union. The employer has to present the grounds for the dismissal and allow the trade union a period of five working days (in case of dismissal with notice) or three working days (in case of a summary dismissal) to reply and give its opinion.

Employees who enjoy special protection against dismissal (employees' representatives, pregnant employees, employees on maternity leave, etc.) may only be dismissed if there are justifying grounds for a summary dismissal.

If the procedural requirements are not observed by the employer, the dismissal is void.

In **Romania**, the employer may dismiss the employee for being professionally unfit only after having completed the preliminary evaluation procedure. The preliminary evaluation procedure is stipulated by the labour collective agreement concluded at the national level or applicable labour collective agreement concluded at the level of the branch of activity, as well as by the company's rules and regulations.

The employer has to issue the dismissal decision within a certain time limit: e.g. within 30 days from the date of establishing the dismissal cause. The dismissal decision is null and void if it is issued after the expiration of the term within which it should have been ordered. No time limits have to be observed in case of a dismissal due to the fulfilment of the retirement conditions: the dismissal decision may be issued at any moment after the date the employee meets the conditions for an old-age pension.

The dismissal decision has to be in writing and delivered to the employee. It has to be motivated *de facto* and *de jure* and comprise details about the legal remedy. It has to state the notice period and the list of all other suitable positions in the company which are offered to the employee and the time period within which the employee has to decide. Violation of this rules render the dismissal null and void.

In **Slovakia**, a dismissal has to be in writing, it has to be delivered to the employee and it must not be made conditional. The withdrawal of the dismissal is only possible with the consent of the other party or before it has been served (since it has not yet caused legal effects).

The participation of employees' representatives is foreseen. They have to be notified about the dismissal and consulted with. The employees' representatives have ten calendar days to discuss the case and express their opinion.

Special protection for certain categories of employees has to be observed (see 3.5. and 6.2.).

In **Slovenia**, prior to a dismissal for the reason of incapacity, the employer has to provide the employee an opportunity to defend him/herself (except if, due to the existing circumstances, it would be unjustified to expect that, 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 the employee's trade union in writing 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 case of a dismissal of a trade union representative a consent of the trade union is necessary, etc. (see above 3.5. and 6.2.)

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 the employee about the legal remedies and his unemployment insurance rights.

6.4.3. Effects of the dismissal

The most important effect of the dismissal is that the employment relationship is terminated by the expiry of the period of notice (except in some new Member States where no notice period is necessary in certain exceptional cases and, thus, the employment relationship is terminated immediately).

In most of the new Member States, the employees dismissed on grounds related to the capacities or personal attributes of the employee are entitled to severance payment. The particularities of each Member State are described below.

In all new Member States, the employees are entitled to unemployment benefits, according to the general rules (e.g. previous employment, no other job, active search for a new job, etc.). Compared to other ways of termination of employment relationships, there are, in general, no special effects as regards pension insurance and health insurance rights of the dismissed employees (see Section 4.3.).

In **Bulgaria**, a severance payment is bound to the grounds for a dismissal.

In **Cyprus**, an employee is entitled to compensation only if the dismissal is declared unfair.

In **the Czech Republic**, an employee is entitled to a severance payment only in case of a dismissal on grounds of a long-term health incapacity (the amounts are determined by collective agreements), but not in other cases.

In **Estonia**, a severance payment has to be paid to the employee dismissed due to his or her unsuitability for the job (at least in the amount of one monthly salary), but not in case of the dismissal due to the employee's long-term incapacity for work.

In **Hungary**, an employee is entitled to a severance pay in all cases of ordinary dismissal and in case of the dissolution of the employer without legal succession. There are special rules for the so-called 'pensioners', who fulfil the conditions for a pension: they are not entitled to a severance payment.

The minimum amount of a severance payment is provided by the law and depends on the length of service at the given employer:

- one month salary for employment of up to 3 years;
- two months' salary for 3 to 5 years;
- three months' salary for 5 to 10 years;
- four months' salary for 10 to 15 years;
- five months' salary for 15 to 20 years;
- six months' salary for 20 to 25 years.

The employee is entitled to an increased minimum severance payment (of three months' average earnings) if the employment is terminated within the five-year period preceding his or her eligibility for an old-age pension.

In **Latvia**, an employee is entitled to a severance payment in case of a dismissal related to the capacities or personal attributes

of the employee. The amount depends on the length of service at the employer:

- one month average earnings if the employee has been employed by the employer for less than 5 years,
- two months' average earnings for the employment of 5 to 10 years,
- three months' average earnings for the employment of 10 to 20 years and
- four months' average earnings for the employment of more than 20 years.

In **Lithuania**, the same rules as in the case of redundancy apply (see Section 6.5.4.).

In **Malta**, no severance payment is guaranteed by the law.

In **Poland**, an employee is not entitled to a severance payment in case of a dismissal related to his/her capacities or personal attributes.

In **Romania**, if an employee is dismissed for reasons related to his/her person, there is no entitlement to a severance payment, unless agreed upon by the parties. The law stipulates the employee's right to compensation only in case of a dismissal due to employee's physical unfitness and/or mental incapacity.

The employee is entitled to an unemployment benefit if he/she was dismissed for being professionally unfit for his/her job or for his/her physical unfitness and/or mental incapacity, but not in the case he/she was dismissed because he/she was taken into preventive custody or in case of a dismissal due to eligibility for a retirement pension.

In **Slovakia**, the employee is entitled to a severance payment in case a dismissal is due to health reasons.

In **Slovenia**, an employee is entitled to a severance payment. The minimum amounts of the severance payments are determined by the law:

- 1/5 of the monthly salary 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 salary for each year of employment with the employer, for employment of five to fifteen years;
- 1/3 of the monthly salary for each year of employment with the employer, for employment of the period exceeding fifteen years, but not more than ten monthly salaries, unless otherwise stipulated by the branch collective agreement.

If the employee refuses the employer's offer for another suitable job under an open-ended contract, the employee loses the right to a severance payment.

6.4.4. Remedies

In general, in case of a dismissal for reasons related to the capacities and personal attributes of the employee, the same rules apply as in case of a dismissal for disciplinary reasons (see Section 6.3.4.).

In **Lithuania**, the same rules as in case of redundancy apply (see Section 6.5.4.).

6.4.5. Suspension of the effects of the dismissal

In general, the legal situation is the same as in case of a dismissal for disciplinary reasons. In most of the new Member States the employees do not have a possibility to benefit from the suspension of the effects of the dismissal before the end of the judicial proceedings (see Section 6.3.5.).

6.4.6. Restoration of employment

The legal situation is the same as in case of a dismissal for disciplinary reasons (see Section 6.3.6.).

6.4.7. Penalties

The legal situation is the same as in case of a dismissal for disciplinary reasons (see Section 6.3.7.).

6.4.8. Collective agreements

In general, the legal situation is the same as in case of a dismissal for disciplinary reasons. In most of the new Member States, collective agreements do not play an important role in this regard or even any role at all (see Section 6.3.8. and also Section 2.3.).

In **Hungary**, collective agreements may stipulate further restrictions and prohibitions of termination, though they cannot exclude the right of termination as such. They may regulate the notice period and severance payments in a more favourable manner for the employees than the legislation.

In **Romania**, the collective agreement concluded at the national level, which has a general effect, covering all the employees employed in this Member State, stipulates that a minimum notice period is 20 working days. It also stipulates that during the notice period the employee has the right to be absent from the job 4 hours a day in order to look for a new job without any loss of salary. This collective agreement also stipulates that in case of a dismissal for reasons that cannot be imputed to him/her, the employer is obliged to pay compensation of 50% of the employee's monthly salary.

In **Slovenia**, some collective agreements may determine longer periods of notice and higher amounts of severance payments.

6.5. Dismissal for economic reasons

The notion 'a dismissal for economic reasons' encompasses dismissals for reasons which are not related to an individual employee. Such dismissals often concern a great number of employees and special rules apply in such a case (collective dismissals, collective redundancies), mainly of procedural nature.

6.5.1. Substantive conditions

In all new Member States, a valid reason not related to the individual employee must occur and a period of notice has to be given.

In **Bulgaria**, according to the labour legislation, economic reasons justifying a dismissal may be the following:

- closure of a part of the enterprise (termination of the activity of a separate unit, such as a workshop, a laboratory, a department, an office, etc.; the reasons that have caused the closure thereof are of no importance),
- staff reduction (an expected decrease of a certain number of employees due to different reasons, such as rationalization of work, or introduction of new technology, etc.),
- a decrease in the amount of work (a decrease in the production programme, the quantity of the products manufactured and the like, due to various reasons, such as a shortage of raw materials, lower demand for the products and smaller sales on the market, etc., because of which the production staff has to be reduced),
- suspension of work for more than 15 working days (temporary cessation of the activity of the enterprise, irrespective of the reasons thereof – shortage of materials, break-down or repair of the machinery, etc.),
- relocation of the enterprise (whereby two elements are necessary: the enterprise as a whole or only a part of it is moved to another location; refusal of the employee

to work at the new location of the enterprise or unit),
- a concluded management contract (such contract is concluded for the management of public and private commercial companies for a term of up to 3 years and specifies the business task of the manager as well as his/her remuneration, it is a mandate contract; the manager also has the right to dismiss employees from the management staff of the enterprise and to appoint new employees in their positions in order to create his/her own team of collaborators; this possibility lasts for the first 9 months following the commencement date of the management contract).

The periods of notice are different for contracts of employment for indefinite period and for fixed-term contracts of employment. For the first one, the minimum period of notice is 30 days, the parties may agree upon a longer period of notice; however, it may not exceed three months. For a fixed-term contract the period of notice is three months. The employer is entitled to terminate the contract of employment prior to the expiry of the period of notice; in this case, the employer is liable to pay compensation in the amount of the employee's gross remuneration for the rest of the notice period. The employee may terminate the contract of employment prior to the expiry of the notice period as well. This is possible in case he/she has found another suitable job; the employee is then liable to pay compensation to the employer in the amount of gross remuneration for the rest of the notice period.

The employer has the right to choose which employees are to be dismissed. The employer may decide not to dismiss those employees who hold the positions which are made redundant, and to dismiss other employees instead, the latter working in other parts of the enterprise which are not closed, or holding positions which are not made redundant. The law determines the scope of employees among which this selection is made. The selection is made among the employees whose positions and functions are close or similar to those closed or made redundant. The law lays down the criteria for the selection (qualifications, such as knowledge, skills, and the level of performance, such as the quantity and the quality of the work rendered). The selection of redundant employees is subjected to judicial control.

In **Cyprus**, a dismissal for economic reasons (a redundancy dismissal) is justified:
- if the employer has ceased or intends to cease to operate the business where the employee is/was employed.

In addition, a redundancy dismissal is justified for the following reasons that are related to the operation of the business:
- modernization or any other change in the method of production or organization that necessitates reduction in the number of employees,
- change in the products or the method of production or the expertise required by the employees,
- closure of a specific department, unit,
- credit difficulties,
- lack of orders or raw materials,
- reduction of the volume of work or the business.

In **the Czech Republic**, a justifying reason as well as a period of notice is required. An economic reason occurs:
- if the employer's enterprise (undertaking) or part of it ceases to exist,
- if the employer's enterprise or part of it is transferred to another location,
- if the employee is to be made redundant because of a decision by the employer or a competent body to change the enterprise's activities or its technology, to reduce the number of employees for the purpose of increasing labour

efficiency, or to make other organizational changes.

The cessation of an employer's enterprise means that the company without any legal successors ceases to exist as a legal person. This situation is essentially different from the so-called dissolution of an employer's enterprise in case of a merger, consolidation or division, where the employment relationships are transferred to the new entity. When the employer's enterprise ceases to exist, its economic activities cease to exist, too. If an employer ceases to exist before complying with all the obligations he/she has towards the employees, the authority which decided upon a cessation of the employer has to determine who shall satisfy the claims of the employees of the former employer. If the employer's enterprise is liquidated at the same time as it ceases to exist, the duty rests with the liquidator. If dismissal is due to a cessation of a part of the employer's enterprise, the employer continues to exist as a legal entity and is obliged to fulfil all obligations in relation to the dismissal of employees.

If employees do not agree with the change of the place of work in case of a relocation of an employer's enterprise, and this change does not comply with the original employment contract, the employer may – if there are also no possibilities to employ these employees in the place of their residence – dismiss them due to economic reasons. If only a part of an employer's enterprise is transferred to another location, a dismissal is possible only if the employees are not willing to work at the new location and the employer does not have the possibility to employ them either in the original place or at the place of the employee's residence.

Organisational changes in the broadest sense also justify a dismissal. A causal link must exist between the redundancy of an employee and the organizational changes introduced, i.e. the employee is made redundant as a consequence of organizational changes. If there are more employees doing the same work, the employer alone makes the choice which of these employees will be dismissed. According to the case-law, the court is not empowered to review the decision made by an employer, yet prohibition of discrimination has to be observed.

A minimum period of notice provided for by the law is three months.

There is a general *ultima ratio* rule establishing the employer's duty to offer another suitable job to the employee. This is a precondition for the validity of a dismissal. A dismissal is lawful only if the employer may prove that there is no such job or if the employee has refused it. The state of health, the abilities of the employee, as well as the employee's qualification have to be taken into account. The offer of another suitable job may be connected with a preceding training (if not unreasonably costly). The employer may dismiss the employee only if:

- the employer, after the previous training, does not have the possibility of employing the employee concerned in the place agreed as a place for the performance of work, nor in the place of his/her residence and
- the employee is not willing to accept another suitable work or to undergo previous training for such work.

In case of cessation of the employer's enterprise or a part of it, an employer in fact cannot comply with the duty to offer another job, since there are no vacancies available.

In **Estonia**, the following economic reasons can serve as the grounds for a dismissal:

- liquidation of the enterprise, agency or other organisation,
- declaration of bankruptcy of the employer,
- lay-off of employees.

An employer may lay off an employee if:

- the work volume is reduced (e.g. the number of orders is cut),
- the employee's position is made redundant due to reorganisation of production or work,
- two employees have the right to work on the same position (e.g. the employee who formerly worked in this position is reinstated in employment),
- in other cases which require termination of the work (e.g. the employer cannot supply the employee with work under the agreed conditions).

The minimum period of notice is two months; a failure to give advance notice does not render a dismissal unlawful, but compensation has to be paid in the amount of the average daily wages for each working day short of the period for advance notice. Employment contracts cannot be terminated on the ground of liquidation of an enterprise as an economic entity, because an enterprise is not an employer (a legal person); when an enterprise is wound up, the employees may be laid off.

In case of a bankruptcy, a trustee, appointed by the court, carries out the functions of the employer and, depending on the creditors' interests, the trustee in bankruptcy may continue the employment relationships with the employees or dismiss them. In case of a bankruptcy no prior notice period is required by the law. If a bankruptcy order is cancelled later on, the dismissed employees may, within the period of six months, request to be employed to the vacant positions if any available.

In case of a lay-off, the employer has to make a selection of employees to be dismissed. There are rather strict rules on that. The employees' representatives have a preferential right to remain at work. The employer is also required to keep employed those with better work results. If employees cannot be classified by work results, attention is paid to circumstances pertaining to their capacities or personal attributes (preference is given to employees with occupational diseases or work injuries, as well as to those who have worked for the employer longer or who have dependants, etc.). In the event of a dispute, the employer has to be able to prove why an employee who remained at work is better than a laid-off employee.

The employer has to offer other suitable jobs prior to the dismissals if available, in any of the employer's enterprises. The courts pay special attention to the question whether the job offer was reasonable.

In case of lay-offs, the minimum period of notice is:

- two months, if the employee has been continuously employed by the employer for less than 5 years,
- three months, if the employee has been continuously employed by the employer for 5 to 10 years,
- four months, if the employee has been continuously employed by the employer for more than 10 years.

In **Hungary**, reference to economic reasons usually occurs in the course of collective redundancy (see also Section 6.5.3.). The situations justifying economic dismissals are mainly as follows: termination of the given position or place of work, the merger of duties of positions, out-sourcing of some duties, etc.

According to the case-law, the examination of the grounds for dismissal does not entitle the court to interfere in deciding about the questions under the competence of the management of the employer which fall outside the framework of the labour dispute; for instance, in case of a dismissal justified by the fact that the employee's position was terminated due to reorganisation, it cannot be examined whether the reorganisation was

reasonable or not, and it cannot be examined either why the employment of the employee concerned was terminated and not the employment of another employee meeting similar criteria.

The change of the employer by legal succession (transfer) does not constitute a valid reason for an economic dismissal (see Section 6.5.10.2.).

In **Latvia**, economic reasons justifying dismissals occur:

- if an employee who previously performed the specific work has been reinstated,
- if the number of employees is being reduced (redundancy case),
- if an employer is being liquidated.

The notice period is one month.

In case a former employee is reinstated to his or her former position, the new (current) employee may be dismissed. However, the current employee may be dismissed only in case, taking into account her or his skills and qualifications, there is no possibility to offer her/him another position.

Redundancy is regarded as termination of an employment agreement due to reasons that are not related to the employee's conduct or abilities, but which are well-grounded by urgent business, organizational, technological or similar measures carried out within an undertaking. According to the case-law, a dismissal is possible where as a result of these circumstances, it is objectively impossible to maintain the employee's previous employment terms and conditions. A dismissal may be issued only if there is no possibility to offer the employee an other position within the undertaking. Once established that such activities (business-related, organizational, technological or similar activities carried out within an undertaking) have been carried out, the court does not rule on their necessity or suitability, which rests solely upon the discretion of the employer.

If the employer has to choose who will be dismissed, he/she has to observe the priority of certain employees. The priority goes to the employees with better results in work and higher qualifications. If there is no such difference, the priority is given on the basis of other circumstances, for example:

- longer period of service with the employer,
- work injury or occupational disease,
- family responsibilities (children under 14,etc.),
- employees with disabilities, etc.

In **Lithuania**, redundancy means the termination of an employment contract at the initiative of the employer (with notice) due to economic, technological grounds or the restructuring of the workplace, as well as other similar significant reasons. The legislation does not specify particular cases which fall under the term 'redundancy', rather, it defines this reason only by a general clause.

According to the case-law, the following may be classified as economic reasons: economic necessity, changes in technology, performance requiring a smaller number of employees, changes of organisational nature due to the cessation of certain activities. A change of the owner of an enterprise or a transfer of undertaking (also partial) may not be deemed as structural changes constituting a valid reason for redundancy (see Section 6.5.10.2.)

In case of a dismissal on economic grounds, the employer has to offer the employee another job available. A dismissal is only allowed if the employee cannot, with her/his consent, be transferred to another job.

Certain groups of employees enjoy stronger protection against a dismissal. Employees,

who will be entitled to a full old-age pension in not more than five years, employees under 18 years of age, employees with disabilities and employees raising children under 14 years of age may be dismissed for economic reasons in extraordinary cases only, where the retention of the employee would substantially violate the interests of the employer.

If the employer has to choose between the employees who are to be dismissed, she or he has to observe certain rules according to which the priority has to be given to those:

- with an occupational disease or work injury;
- with family responsibilities (raising children, caring for the dependent members with disabilities),
- whose continuous length of service at that workplace is at least ten years, with the exception of employees, who are entitled to a full old-age pension or are in receipt thereof;
- who will be entitled to the old-age pension in not more than three years,
- who are elected to the employees' representative bodies, etc.

The minimum period of notice is two months; yet, it is three months for certain categories of employees (those who will be entitled to a full old-age pension in not more than five years, for employees under 18 years of age, for employees with disabilities and employees raising children under 14 years of age).

In **Malta**, in case of a dismissal for economic reasons (redundancy), the employer has to give the employee due notice. The periods of notice depend on the length of service with the employer and are as follows:

- if the length of service with the employer is more than one month but less than six months, the notice period is one week,
- if the length of service is more than six months, but less than two years, the notice period is 2 weeks,
- if the length of service is more than two years, but less than four years, the notice period is 4 week,
- if the length of service is more than four years, but less than seven years, the notice period is 8 week,
- if the length of service is more than seven years, the notice period is longer for one additional week for each subsequent year of service up to 12 weeks maximum.

The dismissed employee may either continue to perform work until the period of notice expires or, at any time during the period of notice, require from the employer to pay a sum equal to the salary that would be payable in respect of the unexpired period of notice and therefore in the latter case not work during the notice period. Usually, employees in this situation opt for the latter since during such notice period they would start seeking new employment.

When deciding who among the employees will be dismissed, the rule 'last in first out' applies (with certain exceptions).

The dismissed employee has a right to re-employment under certain conditions if the post formerly occupied by him or her is again available within a period of one year from the date of termination of employment. In such a case, an employee is entitled to reemployment at conditions not less favourable than those to which he or she would have been entitled to if the contract had not been terminated. Besides, an employee be deemed to have been continuously employed notwithstanding that the employment had previously been terminated on grounds of redundancy.

In **Poland**, dismissals for economic reasons (redundancy) are regarded as '*ultima ratio'*. Such dismissals are possible only in case of necessity, if there are reasons which are not related to the employees. The law does not

specify particular cases; in practice, these grounds are related to economic difficulties, technological changes, production-related or other comparable reasons.

An employer has the managerial power to decide how to run the business and whether more or less employees are needed. The labour court does not have the power to check the employer's decision on which the redundancy is based. However, the labour court is obliged to check whether or not the decision to dismiss employees for economic reasons is sound. According to the case-law, valid grounds for a dismissal do not exist if the dismissal is preceded or followed by the engagement of a new employee entrusted with similar duties as those of the dismissed employee claiming reinstatement. The employer is obliged to do its best to avoid the dismissal.

The periods of notice are as follows:

- two weeks, if an employee has been employed by the employer for less than 6 months,
- one month, if an employee has been employed more than 6 months and less than 3 years,
- three months, if an employee has been employed for at least three years.

In **Romania**, a dismissal for economic reasons is the consequence of the suppression of the employee's position due to economic difficulties, technological changes, or reorganisation of activities. A dismissal on such reasons has to observe the following conditions:

- the suppression of the employee's position can only take place as a consequence of economic difficulties, technological changes, or reorganisation of activities,
- the suppression must be effective and have an actual and serious cause (the suppression is not effective if it is followed by the reestablishment of the same position within a short period of time; the modification of the position's title cannot be held as an effective suppression of that position, either),
- an employee's dismissal has to be a consequence of the suppression of his/her own position.

The employer has to observe a period of notice. A minimum period of notice is 15 working days; for employees with disabilities it is 30 working days.

In **Slovakia**, the following may be economic reasons for a dismissal:

- winding up of the employer without legal succession,
- winding up of a part of the employer's businesses,
- relocation of the employer as a whole or a part of it,
- an employee becomes redundant due to a change in his or her work, the use of new technologies, a reduction of the workforce with a view to increasing labour effectiveness, or due to other organisational changes (a relatively wide range of economic reasons connected with rationalisation).

Since the winding-up does not automatically lead to the termination of employment relationships, the employer is obliged to dismiss the employees before the dissolution becomes final. In case of winding-up, the employer has no objective possibility to offer the employees other suitable work; besides, there are no protected periods (within which a dismissal is prohibited) and no prior consents are necessary. In case of winding-up of only a part of the business, the employer has to offer another suitable job; a dismissal is possible only, if the employer cannot offer another suitable job or if the employee refuses to accept such job.

In case of relocation of the businesses, the employer has a right to dismiss an employee if he/she is not willing to agree upon the change of place of work.

In case of organisational changes, there must be a causal relationship between the organisational changes and redundancy; in case of a court dispute, the burden of proof is on the employer. The employer has exclusive competence to decide which employees are to be made redundant; the court may not review the decision on the selection of the redundant employees. The employer has to offer another suitable job prior to a dismissal.

The employer may not re-establish the abolished job position and later assign it to another employee during a three-month period.

The employer has to observe the period of notice. The minimum periods of notice are prescribed by the law and are the same irrespective of the grounds for the dismissal. The minimum period of notice amounts to two months; for the employees with at least five years of service with the employer, the minimum period of notice amounts to three months. For part-time employees with less than 20 hours a week, a 15 days' period of notice has to be observed.

In **Slovenia**, the economic reason justifying a dismissal is defined in labour legislation 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 – reasons related to the capacities or personal attributes of the employee (see Section 6.4.):

- the 'ultima ratio' rule,
- the obligation to check whether there are alternatives to a dismissal (the obligation to offer another suitable job),
- the time limits for a dismissal.

A dismissal for economic (business) reasons is an ordinary dismissal which requires a period of notice. The minimum period of notice in cases of a dismissal for economic reasons 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,
- 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 periods of notice. Compensation instead of the 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.

6.5.2. Procedural requirements

In all new Member States, there are special rules for the collective redundancies (see Section 6.5.3.). In most of the new Member States, the procedural requirements for economic dismissal, which are not considered to be collective dismissals, are very much similar to those applicable for dismissals with notice period on the grounds related to the employee (see Section 6.4.2.).

In **Bulgaria**, special (preliminary) protection has to be observed in case of dismissals for reasons related to the employee's person.

In **Cyprus**, the employer must notify the Minister of Labour and Social Security about the proposed redundancies at least one month in advance. The notification should include:

- the number of employees affected,
- the specific department or departments of the business that the affected employees work for,
- the specialization and if possible the names of the employees affected as well as their financial obligations,
- the reasons for the redundancy.

The Ministry may contact the employer to see if there is any other solution than laying off the employees. If no solution is found, the employer may dismiss the redundant employees.

In **the Czech Republic**, a special protection against dismissal has to be observed in certain cases, for certain categories of vulnerable employees (see 3.5. and 6.2.). Besides, all other procedural and formal requirements have to be met, which are, with few exceptions, the same as in the case of reasons related to the employee's person (see 6.4.2.). Besides the requirements which are the same as in the case of a disciplinary dismissal, the employer is obliged to assist the employee in seeking other suitable employment; yet, the termination of employment relationship does not depend on the outcome of this assistance – the employment relationship is terminated upon the expiry of the notice period. No such obligation exists if the employee refused another suitable job which the employer had offered him before the dismissal.

In **Estonia**, the rules are very much similar to those applying in case of a dismissal with notice related to the capacities or personal attributes of an employee. The dismissal has to be in writing. The written letter of dismissal has to explain the reason for the dismissal. Special protection for certain categories of employees has to be observed.

In **Hungary**, the general rules for all dismissals with notice period apply (see Section 6.4.2.).

In **Latvia**, the employees' representatives participate in the dismissal procedure. In the case an employee is a member of a trade union, the employer is under obligation to obtain a prior consent from the respective trade union. Special protection of certain employees has to be observed. The dismissal has to be in writing and it has to state and substantiate the reasons for the dismissal.

In **Lithuania**, the procedure for redundancy is regulated by the law in an imperative manner. This procedure comprises:

- information and consultation with the employees' representatives,
- a consent of a competent body of the employees' representation and special protection in certain cases (for instance, in case of a member of the trade union or the works council, a pregnant employee, etc.),
- notification to the employee,
- time-off to the employee for seeking a new job,
- dismissal and settlement of accounts.

In **Malta**, there are no special procedural requirements.

In **Poland**, in the case an individual employee is dismissed for economic reasons, the same procedural rules apply as in all dismissals with notice period (6.4.2.).

In **Romania**, the procedural requirements are more or less similar to the case of dismissal for reasons related to the person of the employee (see Section 6.4.2.), especially as regards the form and the content of the letter of dismissal and the communication of it to the employee. There are no time limits within which a dismissal should be issued.

In **Slovakia**, the general procedural requirements are the same for all cases of a dismissal with a period of notice (see Section 6.4.2.).

In **Slovenia**, 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 (see Section 6.4.2.). 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. The employer is obliged to inform the trade union of the employee about the intended dismissal and to observe special protection against dismissal for certain categories of employees (for instance employees' representatives, see also Sections 3.5. and 6.2.). The form and the content of the letter of dismissal are regulated in the same manner as in any other dismissal (see 6.4.2).

6.5.3. Specific requirements for collective dismissals

In all new Member States the legal regulation on collective dismissals follow the requirements from the Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies. Special procedural requirements for collective dismissals are enacted providing for:

- the information and consultation with employees' representatives with a view to reaching an agreement and
- for the notification of the projected redundancies to the competent public authority.

In all new Member States, the labour legislation regulates the form and the content of the information which has to be supplied by the employer to the employees' representatives. It has to be in writing and include: reasons for redundancies, the number of all employees, the number of redundant employees, the period over which the dismissals are to be effected, the criteria, etc.. The rules specify the objectives of the information and consultation procedure as well as the issues to be covered by it (ways and means of avoiding collective redundancies, reducing the number of dismissed employees, mitigating the consequences, etc.) and the role of competent public authority, etc.

Redundancies may not take effect before the expiry of a certain period of time after the notification. The Directive 98/59 sets a minimum of 30 days, with the possibility to extend this period to 60 days (this rule is followed, for example, by **the Czech Republic**, **Estonia, Poland, Romania** and **Slovenia;** similar by **Hungary** – yet, without a possibility of extending it to 60 days). Some Member States have set longer periods of time (for example, in **Bulgaria** the initial period of time is 45 days and in **Latvia** 60 days, with the possibility to extend it to 75 days, and in **Lithuania** even two months).

The definition of collective redundancies as regards the number of the affected employees differs between the new Member States. Most of them decided to follow the first concept of the Directive 98/59, according to which special rules apply if the number of redundancies over a period of 30 days is:

- at least 10 in establishments normally employing more than 20 and less than 100 workers,
- at least 10% of the number of workers in establishments normally employing at least 100 but less than 300 workers,
- at least 30 in establishments normally employing 300 workers or more.

This rule applies in **Bulgaria**, **the Czech Republic, Hungary, Lithuania, Malta, Poland, Romania** and in **Slovenia** (in the latter, the definition combines both concepts of the Directive 98/59).

In **Latvia**, a modified first version applies: the necessary number of employees made redundant over a period of 30 days is:

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

In **Slovakia,** the second concept applies: redundancies are considered as collective redundancies if the number of redundant employees is at least 20 over a period of 90 days, including dismissals by notice period on economic grounds and mutual agreements on the same grounds.

The employees' representatives who participate in the procedure in case of collective redundancies are trade unions (for instance, in **Poland, Slovenia**) or elected works councils or similar bodies within the enterprise (**Hungary**) or both types of the employees' representatives (**Bulgaria, Lithuania, Romania**). In certain new Member States the law provides for the possibility that in case there are no employees' representatives within the enterprise, the employer has to inform the employees directly (**Estonia, Lithuania, the Czech Republic**). In **Slovakia**, although no employee representative bodies have been established within most employing entities, the law does not lay down the obligation of the employer to conduct consultation procedures directly with the employees. In **Hungary**, if there is no works council within the enterprise, a special committee is set up by the local trade unions and non-union employees.

In some new Member States there are special, additional rights which the dismissed employees enjoy in case of collective redundancies. For example, a preferential right to re-employment if the employer employs new employees within the given period of time after the redundancies have taken the effect (in **Romania** nine months, in **Slovenia** one year).

6.5.4. Effects of the dismissal

The most important effect of the dismissal is that the employment relationship is terminated by the expiry of the period of notice.

In all of the new Member States (except Malta and Romania) the employees dismissed for economic reasons are entitled to a severance payment. The particularities of each Member State are described below.

In all new Member States, the employees are entitled to an unemployment benefit, according to the general rules for the entitlement to such benefit (e.g. previous employment, no other job, active search for a new job, etc.). Compared to other ways of termination of employment relationships, there are, in general, no special effects as regards pension insurance and health insurance rights of the dismissed employees (see Section 4.3.).

In **Bulgaria**, an employee is entitled to a severance payment of a minimum of one monthly gross salary.

In **the Czech Republic**, a severance payment amounts to a minimum of a double of the average monthly earnings. There is no such right in for part-time workers and in case of transfer to another employer. There is a duty to pay back the severance payment in case of re-employment of the dismissed employee by the same employer within a certain period of time.

In Cyprus, an employee is entitled to a redundancy payment from the Redundancy Fund. A maximum is set at 75,5 week's pay. The employee will only be allowed to get compensation from the Redundancy Fund if she or he worked for the employer for at least 104 weeks. If the employee reached the retirement age before the date of termination of employment, she or he is not entitled to any payments.

In **Estonia**, a severance payment (compensation) has to be paid to the employee dismissed, the amount of which depends on the length of service with the employer:

- two months' average salary, if the continuous employment at the employer has been up to 5 years,
- three months' average salary, if the continuous employment at the employer has been 5 to 10 years,
- four months' average salary, if continuous employment at the employer has been more than 10 years

Hungary and **Latvia** (see Section 6.4.3.).

In **Lithuania,** a severance payment depends on the length of service at the employer:

- if under 12 months, one monthly average salary,
- if 12 to 36 months, two monthly average salaries,
- if 36 to 60 months, three monthly average salaries,
- if 60 to 120 months, four monthly average salaries,
- if 120 to 240 months, five monthly average salaries,
- if over 240 months, six monthly average monthly salaries.

The severance pay has to be paid not later than on the last day of work.

In **Malta**, the employer is liable to pay compensation only if a dismissal is considered to be unlawful.

In **Poland**, an employee is entitled to a severance payment (small employers with up to 20 employees are exempted from the obligation to pay severance payment). The amount depends on the previous length of service with the employer:

- one month salary in case of employment of less than two years,
- two months salary in case of employment between two and eight years,
- three months salary in case of employment longer than eight years.

In **Romania**, there is no entitlement to a severance payment, unless agreed upon by the parties. Some special laws provide for certain payments in case of collective redundancies.

In **Slovakia**, the employee is entitled to a severance payment if she/he was employed by the employer for at least five years; the amount of severance payment in this case is triple to the employee's average monthly earnings he would be entitled to during the period of notice. In case of reemployment, the employee has to pay back the severance payment.

In **Slovenia**, an employee is entitled to a severance payment in the same amount as in the case of a dismissal for reasons related to the employee's person (see Section 6.4.3.).

6.5.5. Remedies

In general, in case of a dismissal for economic reasons the same rules on remedies apply as in the case of a dismissal related to the capacities and personal attributes of the employee and a dismissal for disciplinary reasons (see Section 6.3.4.).

In **Cyprus**, in addition to the above, if a redundancy is proved by the court then it will order the Redundancy Fund to pay the employee the redundancy payment. Alternatively, if the dismissal is considered by

the court to be unfair, the employer is liable to pay damages. The amount of damages depends on the number of years of employment and is the same for unfair dismissal as for redundancy payments.

6.5.6. Suspension of the effects of the dismissal

In none of the new Member States, the suspension of the effects of the dismissal is possible in case of a dismissal for economic reasons. There are no suspension possibilities in Poland and in Slovenia, either (in these two Member States the suspension is possible in other cases of dismissal; see Section 6.3.5. and 6.4.5.).

6.5.7. Restoration of employment

The legal situation is the same as in other cases of dismissals (see Section 6.3.6. and 6.4.6.).

6.5.8. Penalties

In some of the new Member States, besides the general rules (see Section 6.3.7. and 6.4.7.), there are also special provisions in the law prescribing the employer's administrative liability for offences in relation to collective redundancies, especially for non-compliance with the obligations to inform and consult with the employees' representatives and to notify a redundancy situation to the competent public authority. This is the case in **Bulgaria, the Czech Republic, Estonia, Slovakia and Slovenia.**

6.5.9. Collective agreements

In general, the legal situation is the same as in other cases of dismissals; collective agreements may include some more provisions in relation to dismissals for economic reasons, especially in relation to collective dismissals – the particularities are added below (see also Section 6.3.8. and Section 2.3.). Still, in most of the new Member States, collective agreements do not play a very important role in this regard.

In **Bulgaria**, some additional special protection for dismissals on economic grounds may be provided for by collective agreements.

In **the Czech Republic**, collective agreements may regulate the amount of severance payments.

In **Estonia**, some collective agreements regulate the preferential right to remain in employment in case of a lay-off or provide for more favourable notice periods for lay-offs and compensation.

In **Hungary**, collective agreements are becoming more and more important as regards collective dismissals. They regulate, for instance, the co-operation of the parties in implementing the collective redundancies, the special protection of certain categories of employees, additional means of avoiding and preventing collective redundancies, social compensations, etc.

In **Lithuania**, some collective agreements provide for longer notice periods and/or more generous severance payments (especially collective agreements at the enterprise level) or specify further categories of employees who are entitled to priority to retain the job in case of redundancy or whose dismissal is subject to a prior consent.

In **Romania**, the collective agreement concluded at the national level, which has a general effect and covers all the employees employed in Romania, stipulates supplementary obligations for the employer in case of dismissals for economic reasons. For instance, it determines the minimum period of notice at 20 working days. It provides for the right that during the notice period the employee may be absent from work without any loss of pay for at least four hours a day in

order to be able to seek for a new job. Besides, in case of a dismissal for reasons that cannot be imputed to the employee, the employer is obliged to pay compensation of 50% of the employee's monthly salary in addition to any other payments the employee is entitled to.

In **Slovenia**, 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 such a 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 become redundant at the same employer, etc.).

6.5.10. Special arrangements

6.5.10.1. Insolvency

In **Bulgaria**, the insolvency proceedings are long and complex. Their influence upon the employment relationships depends on the stage at which the insolvency proceedings are. By a first court decision on insolvency and the opening of insolvency proceedings, the debtor (employer) is declared insolvent and a temporary trustee is appointed. At this stage of the insolvency proceedings and in the course thereof, the employment relationships are not terminated, as the activity of the indebted employer continues and the employees who perform it are still needed (this case-law has been established in 1997). Only after a further decision is rendered declaring the employer insolvent, the employees may be dismissed; the grounds justifying dismissal include the closure of the enterprise or part of it.

In **Cyprus**, there are special rules on the amounts of redundancy payments in such a case.

In **the Czech Republic**, the declaration of bankruptcy itself does not cause termination of employment relationship. Cessation of an enterprise with liquidation may be a justifying reason for a dismissal on economic grounds (see Section 6.4.1.).

In **Estonia**, the declaration of an employer's bankruptcy is one of the three economic grounds justifying a dismissal.

In **Hungary**, the employees of undertakings under liquidation or voluntary dissolution are granted the same protection as under the general rules. Obligations imposed on the employer are transferred to the liquidator.

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

In case it is not possible to settle with the creditors or to recover the insolvent entity, the court declares the entity bankrupt, and the bankrupt entity is wound-up (liquidated). Therefore, after a declaration of bankruptcy, the employees may be dismissed on the grounds of liquidation of the employer.

In **Lithuania**, upon the opening of the employer's bankruptcy procedure, the employment contracts may be terminated in accordance with the provisions of bankruptcy legislation and the provisions of the labour legislation, which are applicable only when respective issues are not regulated by bankruptcy laws. According to the latter, within three days after the decision of the meeting of creditors or an effective ruling of the court about the commencement of the bankruptcy procedure was passed, the administrator of the bankruptcy procedures appointed by court shall dismiss the employees with a 15 days' notice and a severance pay of two monthly average wages. The intended dismissal is notified to the employment service office, to the municipal authority and to the employees' representatives at the enterprise. A certain number of employees may be asked to continue their work under a fixed-term contract during the bankruptcy procedure.

In **Malta**, there are no special rules regarding termination of employment in case of the employer's insolvency.

In **Poland**, there are no special rules regarding termination of employment in case of the employer's insolvency, either.

In **Romania**, too, there are no special rules for a dismissal due to economic reasons in case of employer's insolvency. The dismissal of any employee must be made with the observance of the substantive and procedural requirements stipulated by the labour legislation. In case of a bankruptcy, the employment contracts of all the employees in the undertaking are terminated automatically on the date the legal entity ceases to exist following its dissolution.

In **Slovakia**, the rules on collective redundancies do no apply to employers who have been declared bankrupt by the court.

In **Slovenia**, insolvency itself does not cause *ex lege* termination of employment relationships. Insolvency itself is not a valid reason for a dismissal, either. The rules on redundancies (dismissals for economic reasons) 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; this shorter period of notice is the same for all employees, irrespective of the length of their service with the employer. The role of trade unions and the Employment Service is, in general, the same as in the case of 'ordinary' collective dismissals for economic reasons. The dismissed employees have the right to a severance payment and the preferential right to employment as well.

6.5.10.2. Transfer

In all new Member States, the rules relating to the transfer of an undertaking (business) or a part of it are under the influence of the respective 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 and *acquis communitaire* on this issue. In all new Member States, there is a core principle that the transfer of an undertaking does not affect the existing employment relationships which continue to exist with the transferee – the new owner, the new employer: the rights and the obligations of the employment contract as well as the sole employment relationship are transferred to the transferee. The transfer alone does not constitute a valid reason for dismissals. The national legislations follow the other rules of the EC Directive, as well.

6.5.10.3. Closure of the business

In general, the rules on redundancies apply. As an exception, in **Romania**, the closure of the business causes *ex lege* termination of employment relationships.

7. RESIGNATION BY THE EMPLOYEE

7.1. Substantive conditions

In all new Member States, the employee may terminate the employment contract with a period of notice at any time without presenting any reasons for the resignation (*ad nutum*); the employee just has to observe a notice period. There are differences between the new Member States as regards the length of notice period in such a case. It is important that the employee's will to terminate the employment relationship is genuine and free, expressed clearly and without any threat, fraud or error. Usually, special rules apply during the probationary period (see Section 8.). There may be different rules as regards fixed-term contracts of employment, too (see Section 3.3.).

In certain exceptional cases, if there is a serious ground, an employee may terminate the employment contract without notice (summary resignation, instant termination of employment) or with a shorter period of notice. In some Member States, the concept of 'constructive dismissal' applies.

In **Bulgaria**, the employee is entitled to terminate the employment contract of definite or indefinite duration either with or without a notice period. The minimum period of notice for contracts of indefinite duration is 30 days; a longer period of notice (yet not exceeding three months) may be stipulated in a collective agreement and/or an individual contract of employment. For fixed-term contracts see Section 3.3.

Certain grounds, enumerated by law, justify a resignation without a notice period, for example:

- the employee is not able to perform his/her the work due to a disease, and the employer does not provide him/her with another suitable job,
- the employer's delay in paying the salary or other payments,
- the unlawful unilateral change of the content of the employment contract,
- reinstatement in the previous job of an employee who has been wrongfully dismissed and is willing to take his/her previous job again. In these cases the termination of the labour contract makes it easier for the employee to take the job he/she has been reinstated in.

In **Cyprus**, the notice periods in case of resignation depend on the length of employment with the employer:

- one week if the length of employment is more than 26 but less than 52 weeks,
- two weeks if the length of employment is more than 52 but less than 260 weeks
- three weeks if the length of employment is 260 weeks or more.

Failure to give a proper notice may give the employer the right to sue for breach of contract.

In certain cases, a resignation by the employee may constitute a constructive dismissal, which is regarded as an unfair dismissal. If a repudiatory breach of contract occurs, the 'innocent' party (the employee) is entitled to either terminate or to affirm the contract. There had to be an immediate threat in relation to the express contract terms, for example: subjecting the employee to abusive and insulting language; refusing to investigate a justified complaint relating to health and safety; making an

unsubstantiated allegation of theft against an employee; denying the employee access to the company's premises by changing the locks and telling customers that the employee no longer works for the company; allowing an employee to be subjected to sexual harassment, etc.

In **the Czech Republic**, an employee may terminate an employment contract with a period of notice of two months, beginning on the first day of the following month after the delivery of notice to the employer and ending on the last day of the following month, when the employment relationship is terminated. The length of notice periods is regulated by the law in an imperative way, therefore it cannot be changed by an agreement of the parties or by collective agreements.

An employee may terminate an employment contract with immediate effect (instant termination) in the following cases:

- the employee is not able, according to a doctor's opinion, to perform her or his job without seriously endangering the health and the employer has not transferred her/him to another suitable job within 15 days since the submitting of the doctor's opinion,
- the employer has not paid the employee the remuneration within 15 days from the date on which it was due.

The employee is entitled to the payment of the average monthly earnings for the period corresponding to the length of notice (i.e. two months).

In **Estonia**, a period of notice in case of resignation is one month (in case of a contract of employment for indefinite period). There are different rules for fixed-term contracts (see Section 3.3.). The employee does not have to justify a resignation, but if a proper cause is given, the period of notice is shorter: five days in case of illness, the need to care for a sick family member, commencement of studies).

The employee may resign due to the employer's breach of contract in the following cases:

- non-compliance or unsatisfactory compliance with the terms of the employment contract by the employer,
- fundamental deterioration of the working conditions due to the transfer of the enterprise,
- changes in the working conditions in connection with reorganisation of production or work,
- introduction of part-time working time or holiday with partial pay due to a temporary decrease in work.

An employee has to observe a period of notice of five days.

In **Hungary**, an employee may resign with notice without any justification and, in certain exceptional cases, also without notice (a justifying reason has to be presented in this case). The minimum period of notice is 30 days.

In **Latvia**, the period of notice in case of resignation is one month. During the period of notice, the employer is obliged to grant the employee the time-off for finding another job, if the employee requests so. A shorter period of notice may be agreed upon by a contract of employment or provided for in collective agreements; a longer period of notice is neither permissible nor enforceable. An employee may resign with immediate effect due to an important reason. There are some special periods of notice (shorter) for certain types of contracts.

In **Lithuania**, the same rules apply to fixed-term and open-ended contracts of employment. An employee may resign without giving any reason with a period of

notice of 14 days. Different periods of notice may be determined by collective agreements (yet, not exceeding one month) and/or contracts of employment (not less favourable to the employee than that prescribed by law and collective agreements).

In case of 'serious reasons', a period of notice is shorter (three days), for example:

- employee's illness or disability,
- if the employer fails to fulfil her or his obligations under the employment contract, violates laws or the collective agreement,
- if the employee who is entitled to the full old-age pension applies for it or is in receipt thereof ,
- if the employee is not paid the remuneration in full for over two successive months, etc.

In **Malta**, there are different rules for open-ended and fixed-term contracts of employment (see also Section 3.3.). In case of an open-ended contract of employment the employee who wishes to resign has to give notice; notice periods depend on the length of service with the employer and are the same as for the employer who wishes to dismiss:

- if the length of service with the employer is more than one month but less than six months, the notice period is one week,
- if the length of service is more than six months, but less than two years, the notice period is 2 weeks,
- if the length of service is more than two years, but less than four years, the notice period is 4 week,
- if the length of service is more than four years, but less than seven years, the notice period is 8 week,
- if the length of service is more than seven years, the notice period is longer for one additional week for each subsequent year of service up to 12 weeks maximum.

If the employee fails to give notice, she or he is liable to pay to the employer a sum, equal to half the salary that would be payable in respect of the period of notice.

If the employee presents a good and sufficient cause, she or he does not have to give notice and resignation takes immediate effect.

In **Poland**, there are different rules for open-ended and fixed-term contracts of employment (see also Section 3.3.). In case of open-ended contracts of employment the employee who wishes to resign has to give notice; notice periods depend on the length of service with the employer and are the same as for the employer who wishes to dismiss:

- two weeks, if an employee is employed by the employer for less than 6 months,
- one month, if an employee is employed more than 6 months and less than 3 years,
- three months, if an employee is employed for at least three years.

The length of the notice period cannot be extended. If the period of notice is not respected, the employer is not entitled to damages; in such case the employer may terminate the employment relationship without notice.

Resignation without notice is possible, if there are important grounds. The employee may terminate the contract without notice, if the employer has seriously violated his/her obligation, for instance, non payment of the salary. An employee is entitled to compensation equal to his/her salary during the notice period. The employee is treated as if she or he had been dismissed by the employer.

Beside that, the employee may resign without giving notice if a physician declares that the work he/she performs is detrimental to his/her health, and the employer does not transfer him/her to some other suitable post.

In **Romania**, the same rules apply to open-ended and fixed-term contracts. An employee may resign at any time without specifying the reason, he/she just has to observe a period of notice. The period of notice cannot exceed 15 days or, for the employees in management positions 30 days. The period of notice determined by the contract of employment and those in collective agreements have to observe the maximum limits, set by the law.

As an exception, the employee can resign without notice if the employer has not met her or his obligations according to the contract of employment.

In **Slovakia**, the employee may resign for any reason or without specifying the reason with the notice period of two months.

In certain exceptional cases, explicitly specified by the law, the employee may immediately terminate the employment contract (summary resignation):

- if, according to a medical opinion, the employee is not able to continue the work without seriously endangering his or her health, and the employer has not transferred her/him to other suitable work within 15 days from the date of receiving that opinion,
- if the employer has failed to pay the employee the remuneration within 15 days from the date on which it was due,
- if there is an immediate threat to the employee's life or health.

In such cases the employee is entitled to compensation in the amount of the average earnings during the two-month notice period.

In **Slovenia**, an employee may terminate the employment contract at any time without presenting any reasons for the resignation, with a period of notice of 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. 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.

A summary resignation is possible in exceptional cases of grave violations by the employer (for example sexual harassment, violation of the principle of equal treatment, non-payment of remuneration, grave violations in relation to health and safety at work, etc.); the reasons justifying a summary resignation are exhaustively laid down by the law. In these cases the employee is treated as if she or he had been dismissed by the employer. She or he is entitled to a severance payment and to a compensation amounting to not less than the amount of the lost remuneration during the period of notice and to the unemployment benefit.

7.2. Desertion of the post

In **Bulgaria**, desertion of the post is not regulated by the law.

In **Cyprus**, desertion of the post may be regarded as a tacit resignation under certain circumstances. If an employee behaves in such a way that the employer may reasonably deduce that the employee has terminated the contract, the contract is terminated.

In **the Czech Republic**, desertion of the post is not a tacit resignation and cannot cause a termination of employment.

In **Estonia**, if an employee does not come to work or deserts the post, the employer may dismiss the employee due to the employee's conduct (breach of duties). Such termination is not considered to be resignation, since the employee has not filed a relevant written application.

In **Hungary**, the desertion of the post does not constitute the lawful termination of employment relationship.

In **Latvia**, there are no rules on this issue. The desertion of the post constitutes a breach of the employment contract which justifies a dismissal by the employer.

In **Lithuania**, the desertion of the post is not regarded as a tacit resignation. Absence from work may be regarded as a gross breach of work duties by the employee, thus the employer may terminate the contract of employment without any notice

In **Malta**, if an employee decides to desert his or her post, this may be regarded as tacit resignation and therefore the contract of employment is deemed to have been terminated.

In **Poland**, there are no specific rules on the matter. Desertion of the post may be considered as grounds for summary dismissal.

In **Romania**, a desertion of the post cannot be regarded as tacit resignation. The employee's intention to terminate the individual labour contract must be unambiguous. However, the desertion of the post may be considered as a breach of contract of employment and, consequently represent a reason for the employer to apply a disciplinary sanction against the employee.

In **Slovakia**, since a resignation has to be in writing, a desertion of the post may not be regarded as tacit resignation.

In **Slovenia**, there are no explicit statutory provisions on the matter. However, for the resignation to be effective, a written statement of the employee is required. Therefore, a desertion of the post may not be considered as tacit resignation, rather as a breach of contract justifying a dismissal by the employer.

7.3. Procedural requirements

In all new Member States, except Cyprus and Malta, a resignation has to be in writing and delivered to the employer in order to be valid and effective. In some new Member States, the law determines that after the delivery of the resignation to the employer the withdrawal is possible only with the consent of the employer. In some Member States, the law determines that the resignation has to be unconditional. Other formal and procedural requirements are explained below.

In **Cyprus**, a written form of the resignation is prescribed for government and public sector employees only.

In **the Czech Republic**, for instant termination of employment by the employee (summary resignation), a written statement has to include the reason justifying it. Time limits have to be observed in this case, as well: one month from the day the employee learnt about the reason.

In **Hungary**, in case of a summary resignation, time limits have to be observed.

In **Lithuania**, the employee is entitled to withdraw his or her resignation not later than within three days. Afterwards, the employee may withdraw it only with the consent of the employer. This measure intends to protect employees against possible pressure by the employer.

In **Poland**, in case of a summary resignation, the written letter of resignation has to state the reason justifying it.

In **Slovenia**, for summary resignation, the time limits are prescribed by the law. An employee has to resign no later than within 15 days as from getting acquainted with the reasons justifying the summary resignation and not later than six months as from the occurrence of this reason. Additionally, prior to the resignation, an employee has to remind the employer about the fulfilment of obligations and inform the labour inspector about the violations.

7.4. Effects of the resignation

By resignation, the employment relationship is terminated after the expiry of the period of notice; in the case of a summary resignation an employment relationship is terminated immediately.

As a rule, the employees who resigned are not entitled to a severance payment in any of the new Member States. There are some exceptions (for instance, in **Slovenia**, the employees who resigned in order to retire are entitled to a certain severance payment).

Besides, the employer is usually obliged to pay severance payment or some other compensation in case of a summary resignation for reasons related to the violations of duties on the side of the employer (or in the case of a constructive dismissal in some Member States). In the cases in which a resignation is justified by certain reasons, the employee is entitled to the unemployment benefit.

Otherwise, there are major differences as regards the entitlement to unemployment benefits. In most of the new Member States, the employees who resigned are not entitled to unemployment benefits; however, in certain Member States, unemployment benefits are provided regardless of the reason for the termination of employment relationship and therefore also employees who resigned acquire it (for instance, in **Cyprus**, **the Czech Republic**, **Latvia**, **Lithuania**, **Slovakia**). In some of them, waiting periods apply in case of termination of employment by a resignation (in **Cyprus,** the waiting period is five weeks, therefore the unemployment benefit is paid on the 6th week after the resignation, in **Latvia** the waiting period is two months and in **Lithuania** eight days; in the case an employee is entitled to a severance payment, the waiting period is one month).

Like in other ways of termination of employment relationships, there are, in general, no special effects as regards pension insurance and health insurance rights (see Section 4.3.).

7.5. Remedies

In **Bulgaria**, there are no special rules, thus general rules on the right to bring an action before the court apply. If the employee does not work during the term of notice, the employer may claim compensation for damages in the amount of the gross monthly labour remuneration for the period of the term of notice.

In **Cyprus**, in case of a constructive dismissal, the employee may claim for unfair dismissal compensation.

In **the Czech Republic**, there are no special rules, thus general rules on the right to bring an action before courts apply. The employer has the right to insists that the employee continues to perform the work, but if the employee does not comply with such an order, the employer is entitled to claim compensation for damages he or she suffered.

In **Estonia**, disputes arising from resignation are settled according to the general rules for settling individual labour disputes.

If the employee has left his/her job prior to the expiry of period of notice, the employer may demand compensation in the amount of the employee's average daily wages for each working day short of the period of notice. If the employee ceases employment without filing an application, the employer has the right to demand compensation from the employee in the amount of his or her one month's average salary.

In **Hungary**, the employer may seek legal remedy under general procedural rules. The employer may claim compensation for damages in case of unlawful resignation.

In **Latvia**, apart from the general ones, there are no special remedies available in case of termination of employment relationships on the basis of the employee's resignation. The employer may claim compensation for damages.

In **Lithuania**, there are no special remedies available in the case of termination of employment relationships on the basis of the employee's resignation. General rules apply (see also 6.3.4). If the employee challenges the validity of the signed resignation letter, the employee has to provide evidence that the resignation was not voluntary or was written against his or her will.

Because of lack of court practice, it remains unclear whether the employer may claim damages from the employee in case she/he disregards the notice period.

In **Malta**, the general rules apply. The employer may institute proceedings before the court for the enforcement of any of the employer's rights within five years.

In **Poland**, there are no special rules, thus the general rules on the right to bring an action before the court apply. In this regard, the employer may bring an action before the court within one year. The employer is also entitled to compensation for an employee's resignation without notice, if an employee cancels the employment relationship without grounds. The employer can demand compensation corresponding to the length of the notice period.

In **Romania**, the employees' resignation cannot be contested by the employer; if the employee does not observe the notice period, the employer has the right to dismiss him or her for disciplinary reasons. The employee may claim that his/her consent was vitiated according to the civil law rules.

In **Slovakia**, the employer may insist on the employee to continue to perform the work; if the employee fails to do so, the employer is entitled to claim compensation for damages.

In **Slovenia**, the employer may pursue an action before the labour court, if an employee does not resign in accordance with the relevant legal rules: he or she may claim damages for the 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 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 general rules in the labour legislation, which would grant an employer the right to certain compensation in case an employee resigns in any of the new Member States. For compensation due to breaches of obligations of the employee in the course of resignation see the Section above.

7.7. 'Contrived' resignation

In many of the new Member States there is no special regulation on the matter; this is the case in Bulgaria, the Czech Republic, Estonia, Malta, Poland, Romania and Slovakia.

In **Cyprus**, the doctrine on constructive dismissals applies (see Section 6.1.).

In **Hungary**, a 'contrived' resignation is deemed unlawful.

In **Latvia**, although there is no explicit regulation of the 'contrived' resignation, the employee may claim before the court that the resignation is null and void due to fraud or deceit exercised by the employer. In such a case the employee would bear the burden of proof.

In **Lithuania**, too, although there is no specific regulation on the 'contrived' resignation, the employee has the right to contest the validity of the termination of employment if the employee's resignation was obtained unlawfully against his or her will.

In **Slovenia**, such 'contrived' resignation is null and void. It is in fact a concealed dismissal and therefore rules on dismissal should be respected. In practice, there are so called 'bianco' resignations (and 'bianco' agreements as well), 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 the employee. Formally, a resignation by the employee took place, but the termination of employment relationship was in fact a consequence of the will of the employer only, therefore a concealed dismissal. Similar problems occur in connection with mutual agreement. According to the case-law, such agreement (resignation) is void, since there was no real and free will of the employee.

7.8. Resignation for proper cause

See above in Section 7.1. about a summary resignation (immediate termination). If there are certain grounds for resignation (proper cause), the employee who resigns does not have to observe a period of notice. As a rule, the employee is entitled to certain compensation, as well. In Cyprus, the doctrine of constructive dismissals applies.

7.9. Collective agreements

In all new Member States collective agreements are of no or of minimum relevance as regards the regulation of the resignation by the employee (in **Bulgaria**, **Latvia** and **Romania** shorter periods of notice may be determined by some collective agreements).

One exception is **Slovenia,** where collective agreements play a more important role. Many of them determine periods of notice. Provisions on severance payments in case of retirement of the employee are included in collective agreements: if an employee

resigns in order to retire, he or she is entitled to a severance payment provided for by the collective agreements which are more favourable than the laws.

8. TERMINATION OF AN EMPLOYMENT RELATIONSHIP DURING THE PROBATIONARY PERIOD

Rules on termination of employment relationship during the probationary period differ a lot between the new Member States. In the majority of the new Member States the rules are the same for the employer and for the employee, whereas in some Member States different rules apply in case of the termination of employment at the initiative of the employer and that at the initiative of the employee during the probationary period (for example **Estonia, Lithuania, Slovenia**). In these Member States, the employers have to justify their decision to terminate the employment relationship even if this happens during the probationary period (a similar opinion is shared by the doctrine in **Latvia**).

The most characteristic feature is that during the probationary period the party who terminates the employment relationship does not have to observe any period of notice (**Bulgaria, Cyprus, Hungary, Malta** during the first month of employment**, Romania**) or the period of notice is much shorter than according to the ordinary rules on dismissals/resignation (**the Czech Republic, Estonia**, **Latvia, Lithuania, Malta**, **Poland, Slovakia, Slovenia**). Besides, in most of the new Member States, neither the employer nor the employee (who enjoys this right also outside the probationary period) has to give any reasons for the termination of employment relationship; the parties do not have to justify their decision to unilaterally terminate an employment relationship during the probationary period.

In **Bulgaria**, there is a special employment contract for a probationary period which may precede the conclusion of an employment contract of definite or indefinite duration. The contract has to be in writing in order to be valid.

The maximum length of the probationary period is six months, irrespective of the type or nature of the work or activities. The parties are free to agree upon the length of the specific contract for probation within these limits. If the parties have not explicitly specified the length, it is presumed that the contract is made for the maximum length of six months.

The probationary period may be agreed upon in favour of the employer (most frequently), the employee (in rare cases), or in favour of both parties. If not explicitly stipulated in the contract of employment, it is presumed that it is concluded in favour of both parties.

During the probationary period the parties have all the rights and obligations under the employment relationship. However, there are special rules on termination of employment. The party in favour of which the probation is agreed may terminate the contract unilaterally, without a period of notice, at any time until the probation term expires. The expression of will has to be clear and unconditional, whereby no justification in required.

If neither party terminates the contract until the expiry of the probationary period, it is presumed that the parties are willing to conclude a final contract of employment of either indefinite or definite duration, depending on their agreement. The parties may also conclude a final contract during the probationary period if the party in whose favour the probationary period has been agreed finds that the probation has passed

successfully; in such a case, the employment contract has to be concluded explicitly and in a written form.

In **Cyprus**, the law provides that no period of notice is necessary if the employment is terminated before the lapse of 26 weeks from the date the employment started. Thus the probationary period set by the law is six months. The contracting parties have the option to extend the probationary period of six months for up to 104 weeks provided that this is done in writing.

During the probationary period an employee can be dismissed without notice and does not have any right to compensation for unfair dismissal.

Certain statutory employment rights are subject to qualifying periods. These have the effect that the employee, whether on probation or not, does not qualify for the rights in question until he or she has been employed continuously for the length of the qualifying period. For example, there is a 26 weeks qualifying period for the general right to complain of unfair dismissal and claim unfair dismissal compensation, or there is a 2 years' qualifying period in order to be able to claim redundancy compensation.

In **the Czech Republic**, the probationary period applies if so agreed upon at the conclusion of the employment contract. The maximum length of a probationary period is three months. If the employee is absent from work for longer than 10 working days, the probationary period is adequately prolonged. The agreement on a probationary period has to be in writing.

During the probationary period, special rules on termination of employment relationships apply, which are the same for the employee and the employer. Each party may terminate the contract of employment due to any reason or without stating any reason. The only requirement is that a minimum period of notice of three days is observed. A written form for termination of employment relationship during the probationary period is required, but failure to comply with this rule does not render the termination of employment relationship invalid.

In **Estonia**, the same rules apply to open-ended and fixed-term contracts. The rules on termination of employment relationship during the probationary period are different for employees and for employers.

The probationary period has to be stipulated in the contract of employment. The probationary period cannot be applied to disabled persons who work in positions prescribed for them, and to minors. The maximum duration of the probationary period is four months. The probationary period starts at the employee's commencement of work and covers the time periods of actual work (absence from work due to illness, holiday, etc. is not included).

If during the probationary period the employer is not satisfied with the work of the employee, the employer has the right to terminate the employment contract without any period of notice. The employee is not entitled to any severance payments. The employer has to bring evidence as to why the results of the probationary period were unsatisfactory. Before dismissing a pregnant woman or a person raising a child under three years of age, or an employees' representative due to the unsatisfactory results during the probationary period, the employer is required to obtain a prior consent of the labour inspectorate.

If the employee wishes to resign during the probationary period, she or he has to observe a shorter period of notice of three days.

In **Hungary**, a probationary period may be stipulated when concluding the contract of employment. The duration of the probationary period is thirty days; however, shorter or longer periods may be stipulated in the collective agreement or agreed upon by the parties, whereby they cannot exceed the maximum duration of three months.

An employment relationship may be terminated with immediate effect during the probationary period by either of the parties without any justification. No period of notice and no justification are necessary. The only requirement is the written form. The rules on unlawful termination of employment do not apply, except in case of abuse of the right.

In **Latvia**, during the probationary period, the parties enjoy the same rights and have to observe the same obligations as otherwise. The only difference is the simplified termination option during the probationary period, which is the same for the employer and the employee.

In order to be applicable, the probationary period has to be agreed upon in the written contract of employment, which should clearly stipulate the duration of the probationary period. According to the law, the probationary period may not exceed three months. Temporary inability to work or absence from work is not included. A probationary period is not allowed for employees under 18 years of age.

During the probationary period, the employer and the employee have equal rights to unilaterally terminate the employment contract without presenting any reason; they just have to observe the period of notice of at least three days.

If until the expiry of the contractually agreed probationary period neither party has terminated the contract, it is considered that the employee has passed the probationary period and the employment relations continue. It is not required that the employer communicates to the employee the matter of successful completion of the probationary period in any regulated form.

In case of discriminatory treatment by the employer when terminating the employment relationship, the employee may bring an action before the court within one month claiming appropriate compensation. According to the prevailing doctrine in Latvia, the employee should not be denied the right to claim the reinstatement in the event of unfair termination during the probationary period if the employer cannot justify the dismissal with circumstances evidencing that the employee was not suitable for the particular job (in order to prevent misuse of the probationary period).

In **Lithuania**, there are two types of probationary period that can be agreed by the parties in a contract of employment:

- initiated by the employer and aiming at assessing the suitability of an employee for the work and /or
- requested by the employee in order to assess the suitability of a job for him.

Thus, the probationary period may be stipulated in the contract of employment so as to be at the disposal of both parties or at the disposal of just one of the parties, either the employer or the employee.

During the probationary period, a shorter period of notice applies; it is the same for the employers and for the employees – the period of notice is three days. During the probationary period the employee is free to terminate the contract of employment; he/she just has to observe the notice period, whereas the employer has to prove that she or he had enough evidence to establish that the employee concerned is not suitable for

the job. The employee is not entitled to a severance payment in this case.

The probationary period may not exceed three months; in certain cases specified by the law the maximum of six months is prescribed.

In **Malta**, the same rules apply to open-ended and fixed-term contracts of employment. All employees are subject to a probationary period during the first six months of any employment unless both parties agree to a shorter probationary period. If the employee is engaged in a technical, executive, administrative or managerial post and her or his remuneration are at least double the minimum wage, the probationary period is one year unless otherwise specified in the contract.

During the probationary period, the employment relationship may be terminated at the will by either party without presenting any reason. Neither party has to observe a period of notice if the probationary period has not yet exceeded one month. After one month of the probationary period the party terminating the employment relationship has to, either, give the other party one weeks' notice or else terminate the employment relationship with immediate effect and pay the other party an amount equivalent to half the salary or wage which would have been due to the employee for the week.

In **Poland**, there is a special type of contract – an employment contract for a probationary period, which may precede all other contracts of employment (for indefinite period of time, fixed-term or fixed-task contracts).

The law determines the maximum duration of the employment contract for a probationary period. Such contract may not exceed three months. The same parties cannot enter into two or more consecutive employment contracts for a probationary period for the same job.

An employment contract for a probationary period may be terminated with notice or without notice by either party. If the contract is terminated by notice, even for the employer no justifying reason is necessary. The period of notice is the same for both parties:

- three working days for a probationary period not exceeding two weeks,
- one week for a probationary period longer than two weeks, and
- two weeks for a three months' probationary period.

In case of a summary dismissal without period of notice, either party is bound by the regulations applicable to the other types of employment contracts. However, an employer is not obliged to notify the dismissal to the trade union even when the dismissed employee is a member of a trade union or is represented by the trade union.

The employment contract for a probationary period automatically comes to an end if the parties decide not to conclude any other kind of employment contract upon its expiry. There is one exception: the employment contract for probationary period concluded for at least one month period with a three months pregnant female employee is extended by virtue of law to the day of the delivery of the child.

The employees also enjoy a certain level of legal protection against illegal or unfair dismissal during the probationary period. In case of a breach of formal requirements (e.g. lack of written form of termination) or termination of an employment contract for probationary period on legally prohibited grounds (e.g. discrimination) the employer

has to pay compensation for the entire period for which the contract was concluded.

In **Romania**, the employment contract may be concluded with a probationary period in order to check the abilities of the employee. The maximum length of the probationary period is different for different types of employees: for executive positions it is 30 days, for management positions 90 days, for employees with disabilities 30 days, for unskilled workers five working days, for higher-education graduates 6 months. If the employer fails to inform the employee about the probationary period before the conclusion or amendment of the contract of employment, the employer will not be entitled to check the employee's abilities by such means.

There can be only one probationary period with the same contract of employment (except in case of the new position or profession with the same employer). It is prohibited to successively employ more than three persons on probationary periods for the same position.

During the probationary period, the employee enjoys all the rights and has all the obligations stipulated in the labour legislation, the applicable collective labour contract, the company's rules and regulations, as well as the individual labour contract. During the probationary period, or at the end of this period, the employment contract may be terminated by any of the parties by a written notification communicated to the other party. Thus, no reason for termination of employment has to be presented. It is neither clear in theory nor in jurisprudence whether a notice period has to be observed.

In **Slovakia**, the maximum length of the probationary period is three months. The length of the probationary period must be agreed upon in writing in the employment contract, otherwise it is invalid. In case of impediments to work on the part of the employee, the probationary period is extended accordingly.

During the probationary period, both parties – the employee and the employer – may terminate the employment relationship for any reason or even without giving a reason. The parties just have to observe the minimum period of notice of three days and the written form of the notice; failure to comply with these requirements does not render termination of employment invalid. No involvement of employees' representatives or other competent bodies is required in case of termination of employment during the probationary period, not even in case of employees who enjoy special protection (persons with disabilities, pregnant women, etc.). In case of a minor employee, the employer is obliged to obtain the opinion of his or her guardian.

During the probationary period, the employment relationship may be terminated also in other ways, for example by mutual agreement. If the employment relationship is not terminated during the probationary period, it continues beyond that period.

In practice, the probationary period is often misused by employers. The employers who are no longer able to chain up a series of fixed-term employment contracts conclude an indefinite employment contract with a probationary period and just before its expiry the employer terminates the employment relationship.

In **Slovenia**, a probationary period at the beginning of an employment relationship is possible in the case of open-ended as well as fixed-term contracts of employment. In practice, it is usually used with an open-ended contract. 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 in writing by the parties when concluding 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 certain cases of the employee's temporary absence from work. Many collective agreements determine the length of the probationary period more precisely for different types of work.

During the probationary period, different rules for the employer and for the employee apply as regards the termination of employment relationship:

- The employer may dismiss an employee only upon the expiry of the probationary period, if not satisfied with the employee's work. Many collective agreements regulate certain procedural requirements to be followed by the 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, the employer may not terminate an employment contract 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.
- During the probationary period, an employee is free to resign. The employee 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 not in accordance with the law, fixed-term contracts (for a rather short duration) are often used instead of a probationary period to try and check the new employees. And only after being employed under a fixed-term contract of employment – usually after a rather long chain of such contracts – an open-ended contract is offered to the employee if the employer is satisfied with the employee's work.

9. GENERAL QUESTIONS RELATING TO ALL FORMS OF TERMINATION OF EMPLOYMENT RELATIONSHIPS

9.1. Non-competition agreements

There are rather significant differences regarding the legal regulations of non-competition agreements in the new Member States. In many of them, there are no special rules on the matter or the law regulates only certain questions but not the whole issue in detail. Nevertheless, there are only two Member States in which non-competition agreements would not be possible or even be prohibited (**Lithuania, Slovakia**).

In **Bulgaria**, there is no special regulation of this issue.

In **Cyprus**, the restraint of trade agreements is construed restrictively by the courts. Any non-competition terms must be reasonable and take into account the circumstances of each case. There are no specific rules concerning duration and scope but it is unlikely that a non-competition clause of more than one year will be upheld.

In **the Czech Republic**, it is possible to agree on a non-competition clause which must meet the following requirements:

- a written form (non-compliance with this requirement renders the non-competition agreement invalid),
- the duration of the obligation is at least one year since the termination of employment relationship,
- the employee is under the obligation not to compete with the employer,
- the employer is obliged to provide the employee with an adequate financial compensation amounting at least to the average monthly earning for each month of the validity of the non-competition clause,
- the parties may agree upon the adequate financial compensation which the former employee is liable to pay to the former employer in case of non-compliance with the agreed non-competition clause.

A non-competition agreement may be concluded if it is fair to require such restraint of competition from the employee with regard to the nature of information, knowledge, familiarity with work and technological processes the employee gained in the course of the employment relationship with the employer and if the use of that knowledge could endanger the employer. The agreement may not be concluded if the employment contract stipulated a probationary period (until the expiry of the probationary period).

The non-competition agreement ends by:

- the expiry of the period for which it was concluded,
- the payment of the financial compensation as a sanction for violating the obligation to refrain from competitive activities,
- the employer's backing out of the agreement on the competition clause (however, the employer may back out of the agreement only while the employment relationship lasts),
- the employee's notice (the employee may revoke the agreement on the competition clause only when the employer has not paid her or him the financial settlement for the respective month).

In **Estonia**, the obligation not to compete with the employer, which applies both at the time and after the termination of the

employment contract, has to be agreed upon in writing in the employment contract. The law does not regulate this issue in detail, therefore the relevant obligations of employees are specified in the contracts of employment.

If the non-competition agreement applies after the termination of the employment contract, the employment contract sets forth the term of validity of these restrictions (usually one to two years) and the procedure for payment of special compensation to the employee. In practice, the special compensation is usually included in the employee's salary during the term of the contract. Although such method of compensation fails to meet its goal of ensuring an income for the employee for the time after the termination of employment, labour dispute resolution bodies have accepted this method of compensation. However, it is found that the amount of the special compensation for observing the non-competition agreement must be fair and compensate for the employee's limited choice of a job.

The employee's liability in case of non-observance of duty not to compete is usually stipulated in form of a contractual penalty, the amount of which depends on the special compensation or the average monthly salary paid to the employee.

In **Hungary**, the obligation not to compete with the former employer after the termination of employment may only be imposed on the employee by an agreement. It must be made only in good faith under fair conditions and in return for a proportional consideration. According to the law, such a prohibition may not last for more than a period of three years.
The non-competition agreement must define its extent in detail; it must lay down what competition is prohibited and for what consideration. This may be realised by referring to the sphere of activities or the group of activities or even by naming the competitors with whom the former employee cannot be in business contact. It may also be prescribed that the employee has to report in advance when she or he wishes to establish a new legal relation, and the former employer can either allow it or not.

The prohibition of the abuse of a dominant position must also be taken into account. The prohibition of competition cannot result in a restriction to the extent that entails a significant restriction of market competition.

Non-competition agreements are concluded in the course of employment, sometimes simultaneously with the conclusion of the employment contract.

In **Latvia**, a non-competition agreement is valid and enforceable if it meets the following conditions:

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

The non-competition agreement is invalid without compensation to the employee; however, the law does not specify the exact amount of such compensation, rather it sets forth two general guidance criteria:

- the compensation must be just and adequate and
- aim thereto is to compensate the short term limitation for further career development of the employee in a specific area and the payments have to ensure subsistence resources for the employee.

In practice, the amounts of 20% up to 50% of the average earnings of the employee are usually agreed upon.

The employer is relieved from the duty to pay compensation whilst the competition restriction remains effective in certain cases if the employment relationship was terminated by the employer due to a substantial breach of the employment agreement or employment regulations, illegal actions performed by the employee during performance of work, etc.

The employer may withdraw from a non-competition agreement in writing, prior to the termination of employment relationships (until the expiry of the notice period).

In **Lithuania**, non-competition agreements were allowed by the legislation between 1995 until 2001 (trade sector). Today, agreements on non-competition are considered as agreements establishing so called "additional" conditions on the employment contract, which must be more favourable to the employees in order to be valid. Since the labour legislation does not regulate non-competition agreements, such agreements restricting the freedom of employment may be considered as contrary to the constitutional principle of freedom of employment and establishment. Any proposals to introduce this kind of agreements in the labour legislation have failed in the Parliament several times. However, during the last few years, the non-competition agreements are becoming more and more popular in practice. They mainly stipulate the compensation of the employer's damages, but not the prohibition of any further employment for the former employee.

In **Malta**, the labour legislation does not regulate this issue. In practice such clauses are included in contracts of employment relating to the employees employed in managerial positions or in particularly sensitive positions. According to the case law, such agreements/clauses in restraint of trade must be related to the nature of the employment and must be limited to a reasonable amount of time.

In **Poland**, a non-competition agreement is only valid if it is in writing and if it is limited to areas in which the employer carries on professional activities. Financial compensation by the employer is not required for the agreement to be valid.

An employer may require from an employee to conclude such an agreement. The employee's refusal to do so may serve as a ground for termination of the employment contract. A non-competition agreement can be concluded at the request of the employer if a particular important reason exist. In assessing this reason, position and duties of the employee are considered, in particular the need to protect important information, disclosure of which could endanger the employer's business operation. Such an agreement has to determine:

- the amount of compensation (at least 25 % of the employee's salary for the period within which the non-competition agreement applies);
- the length of the validity of the non-competition agreement (there is no

maximum period for a non-competition agreement).

The non-competition agreement may be terminated by a mutual agreement of the parties concerned. It may be terminated with notice served by one party if this possibility is provided for in the agreement itself (if not, the employer has to pay the compensation, even if the former employee was notified by the former employer that he/she is not bound by the non-competition agreement).

An employer may sue an employee for damages caused by the breach of a non-competition agreement. The case is adjudicated by the labour court.

In **Romania**, a non-competition agreement may be concluded either when concluding a contract of employment or during the employment. By such clause, the employee is obliged to refrain from performing an activity which is competing with the former employer after the termination of employment relationship, and the employer is obliged to pay a monthly compensation to the employee during the entire period of the validity of the non-competition clause. The maximum period of non-competition is two years from the date the individual labour contract was terminated.

The non-competition clause may take effect only if the individual labour contract clearly stipulates:

- the prohibited activities by the employee (however, the non-competition clause may not result in an absolute prohibition for the employee to exercise his/her profession),
- the amount of the monthly non-competition compensation (at least 50% of the average salary the employee was entitled to during the last six months of employment),
- the duration of the non-competition clause,
- the third-parties for whom the former employee may not work,
- the geographical area limiting the non-competition clause.

Based on a notification by the employee or the territorial labour inspectorate, the competent court of law can reduce the scope of the non-competition clause.

If the employee has violated the non-competition clause, he/she is obliged to pay back the compensation and, as the case may be, pay damages to the former employer.

The non-competition clause does not have effect if the employment relationship is terminated on the initiative of the employer, for reasons not related to the employee's person (economic reasons) and in certain other cases of *ex lege* termination of employment (for instance in case of death, dissolution of the employer, nullity of the employment contract, etc.).

In **Slovakia**, under the current labour legislation, it is not possible to conclude a non-competition agreement, according to which the employee would be obliged not to compete with the former employer after the termination of employment relationship.

In **Slovenia**, the employee and the employer may conclude a non-competition agreement which is regarded as a special clause in the employment contract. The prohibition of competition refers to the period after the termination of the employment relationship.

A non-competition agreement is only valid under certain conditions, laid down by law:
- the work of an employee is of such a nature that the 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 reasonable limits of time,
- it may not exclude the possibility of appropriate employment for the employee,
- an adequate compensation for the whole period of the 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 salary (according to the law, a minimum amount is at least one third of the average monthly salary of the employee).

In one of its judgements the Constitutional Court emphasised that, in general, a non-competition clause is not unconstitutional in itself, yet, it must explicitly provide for an adequate compensation for the employee in order to be valid.

According to the labour legislation, 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. In case an employee resigns due to a grave breach of employment contract by the employer, the non-competition agreement may be terminated prior its expiry by the employee's will as well. In such a case, the employee has to notify her/his 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 cannot 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.

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

In certain new Member States such agreements are considered unlawful, null and void (this is the case in Bulgaria, the Czech Republic, Hungary, Latvia, Lithuania, Slovakia); yet, in most of the new Member States, there are no rules on the matter.

In **Bulgaria**, although such agreements may be, in general, considered unlawful, there are certain exceptions: if the employer has paid for the training of the employee, the latter might be obliged to work for the employer for a certain period of time but not longer than six years; even in such cases the employee may terminate the labour contract by giving notice and paying the expenses for the training.

In **Cyprus**, such agreements are valid according to the general rules on contracts. Non-compliance with the contractual obligation that the employee will not terminate the contract of employment during a certain period of time gives the employer the right to sue in civil courts for breach of contract.

In **Poland**, an employee whose training was paid for by the employer often agrees to pay compensation if she or he resigns or is dismissed without notice due to her/his misconduct before a specified date. Such an agreement is valid if training was genuine and the compensation reasonable.

In **Slovenia**, such agreements are rare in practice, 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. There are no special provisions in labour legislation on the matter. According to the case law, such agreements are valid and apply according to the general rules on contracts. An employee 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).

9.3. Issuing of a reference

In all new Member States, the employers are obliged to issue a certain document, certificate about the employment relationship upon the termination of employment relationship. There are differences as regards the content of such certificates and the question whether the certificate is issued upon the employee's request or irrespective of it.

In **Bulgaria**, the employer is obliged to issue on the employee's request an unbiased and fair reference regarding the employee's professional qualities or an unbiased and fair recommendation to be used when applying for another job.

In **Cyprus**, the employer is obliged to issue on the employee's request a reference in respect of the type of work done by the employee and the duration of the employment contract irrespective of the reason for dismissal. The reference may not include anything negative for the employee.

In **the Czech Republic**, the employer is obliged to issue the references at the employee's request within 15 days. The employer's references include all documents concerning the evaluation of the employee's work, his or her qualifications, skills and other facts related to the employee's performance. This document cannot include information that is not related to the work performed. Another document which the employer is obliged to issue at the termination of employment is the so called working paper which include many important data about the employment (the kind of work, the deductions from the salary, information about the health insurance, etc.). If the employer fails to produce an adequate certificate, the employee may bring an action before the court within three months.

In **Estonia**, at the request of an employee, the employer is required to provide the employee with a certificate indicating the type of work and the length of employment. At the request of the employee, a statement regarding the termination of employment relationship will be included into the certificate.
Employers are required to maintain employment record books for all employees, containing data on the length of employment; the employer is required to return the employment record book to the employee on the date of termination of the employment contract.

In **Hungary**, the employer has to issue a different certificates at the end of the employment relationship: a social security certificate, reduced-rate travelling certificate, etc., which are aimed at facilitating the employee's establishing a new employment and are of importance in respect of unemployment benefits. The employer has to issue a certificate about the employment relationship, containing the employee's personal data, social security number, the length of time spent in the employment, the amount of sick leave taken by the employee in the course of the year when the

employment relationship was terminated, etc.

At the employee's request, upon termination of the employment, or within a year thereof, the employer has to provide a work certificate. The work certificate contains information on the job profile and, upon the employee's explicit request, an evaluation of the employee's work.

In **Latvia**, at the request of the employee the employer is obliged to provide a written certificate concerning the length of the employment relationship, the work performed by the employee, taxes deducted and mandatory social security contributions paid.

In **Lithuania**, the employer is obliged to issue a certificate on request of the employee. The certificate includes: the functions of the employee, the duration of employment, and, upon the request of the employee, the amount of his salary and a performance assessment (characteristics). On request, the employer is obliged to issue the employee a written certificate concerning the employee's remuneration and the social insurance contributions paid, as well.

In **Malta**, the employer is obliged, if requested by the employee, to issue a certificate stating the duration of the employment, the nature of the work and, if the employee so desires, the reason for the termination of the contract and the rate of wages paid.

In **Poland**, the employer is required to issue the employee a certificate stating the dates of commencement and termination of the employment relationship and the type of work performed. The employer is also obliged to mention details concerning the dismissal. On request of the employee, the employer has to provide information on the amount of the salary. The employer is liable for damages (up to the amount of six weeks of salary) if he or she fails to furnish such information in the references, or provides inaccurate information therein.

In **Romania**, the employer is obliged to issue, at the employee's request, a document attesting the employee's activity, length of service and specialization.

In **Slovakia**, the employer is obliged to issue the confirmation letter of employment at the end of employment relationship. This document has to include: the length of employment relationship, the type of work, the data concerning the salary withholdings, if there are any, the data on the salary paid, wage compensations, the data necessary for tax or social insurance purposes, the data concerning the agreement on qualification upgrading.

Besides, the employer is obliged to issue a work evaluation report when requested by the employee. The work evaluation report refers to the employee's work performance, her or his qualifications, skills and other facts relevant for work performance. The employee has a right to inspect his personal file and to make copies thereof.

If the employee does not agree with the content of these two documents, the employee may file a court action seeking the revision within three months.

In **Slovenia**, the employer is obliged to return the employee all his/her documents and also issue a certificate in respect of the type of work performed by the employee. In this certificate an employer may not state anything which would impede the employee's future job prospects.

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 inscribed by each respective employer, They include the name of employer, dates of commencement and termination of employment, its duration and working hours. At the termination of employment relationship, the employer is obliged to hand the employment booklet to the employee.

9.4. Full and final settlement

There are rather important differences concerning the legal situation in the different new Member States as regards the question whether a full and final settlement is possible, under what conditions and what effect it may have. In relation to this issue it is important to say that in quite many new Member States the employee cannot renounce her or his statutory rights (for example in **the Czech Republic, Lithuania, Poland, Romania, Slovenia** and possibly in some others as well). In most of the new Member States there are no special rules on the matter in the labour legislation and also due to this fact, there are still open questions about such a settlement. There is no doubt that in **Malta** and **Cyprus** such agreements are valid with the result that the employee cannot pursue any claims before courts in this respect.

In **Bulgaria**, such arrangement is not regulated by the law.

In **Cyprus**, there is a general rule that an employee cannot waive his/her statutory rights unless there is a clear and unequivocal intention to this effect. An employee that receives money in full and final settlement of unfair compensation or other statutory rights is therefore barred from pursuing any other legal remedy.

In **the Czech Republic**, the agreement on full and final settlement is not expressly regulated by the law. If such an agreement was concluded and the employee would have waived his or her rights in advance, such an agreement would be invalid.

In **Estonia**, upon the termination of an employment contract, an employer is required to pay the final settlement (consisting of remuneration not received, holiday compensation, other compensations). An employer is required to pay the employee his or her average salary for each day of delay, but not more than one month's average salary of the employee. No documents are formalised concerning the full and final settlement of claims for damage.

In **Hungary**, upon termination of employment the employer is obliged to settle all the accounts with the employee (the salary and other remuneration). If the employer is a delay, he/she is liable to pay interest. The issuing of a document on the settlement of all accounts is not regulated by law.

In **Latvia**, it is a common practice to specify in a mutual agreement concerning the termination of employment relationship that the parties have no claims in relation to each other arising out of the terminated employment relationship. This contractual provision considerably mitigates the probability of any litigation being initiated. However, it cannot be ruled out completely. A court-approved settlement satisfies the nature of a 'full and final' settlement. If in a labour dispute the court has approved a settlement between the parties and has closed the case on that basis, it is not possible to initiate court proceedings on the same basis again.

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

In **Malta**, the legislation does not specifically deal with the issue of full and final settlement. In practice, however, it is not uncommon that on termination of an employment relationship and on the payment of all amounts due to the employee by the employer by virtue of the employee's employment and termination of it, the parties sign an agreement declaring that the payment given to the employee is to be considered as full and final settlement and the employee will not have the right to pursue the issue further before the Industrial Tribunal.

In **Poland**, there are no specific rules on the matter in the labour legislation. However, the settlement does not constitute renouncement of all possible claims by the employee; in particular, it does not affect the claims for unpaid salary and other rights out of the employment relationship and its termination.

In **Romania**, the labour legislation does not stipulate the possibility of full and final settlement. According to the labour legislation, employees cannot give up the rights guaranteed by the law. Any transaction whose aim is to renounce the employee's rights guaranteed by the law or to limit such rights is void. Usually, the employees sign a document of liquidation of debts upon termination of employment relationship. However, such a signature does not mean that the employee relinquishes any of his or her rights and does not constitute renouncement of the employee of any possible claim.

In **Slovakia**, there are no special provisions on the matter in the labour legislation.

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. However, according to the Constitutional Court judgements, a renouncement of his or her statutory rights by the employee 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 is void.

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APPENDIX: Tables

Explanations

Tables 1(a) to 1(c) present the different situations under which a dismissal is considered to be prohibited or being against certain specified rights in different Member States. These three tables should be looked at together.

Table 2 presents a comparison on the form of notice in different Member States.

Table 3 presents the duration of the period of notice in different Member States. In many of them the notice of disciplinary dismissal may be equivalent to summary dismissal which, by definition, is a dismissal without a period of notice. However, in many, if not all, of the Member States a dismissal on a disciplinary basis may provide for a period of notice if the conduct of the worker is not grave enough to justify a summary dismissal.

Table 4 deals with the obligation to inform the employee of the ground for the dismissal. With regard to the form of justification this table should be read together with table 2, since in some Member States there may not be a specific form for the actual notice, but there is a prescribed form for justifying the dismissal at least if the employee so requests.

Tables 5(a) to 5(c) show the consequences of a dismissal with regard to some financial benefits. Conceptual differences may create some unjustified impression of diversity since particularly the notice of severance payments may be understood in a different way in different Member States. Thus, in some Member States a wider notion of 'compensation' is used instead of severance payments. The situation is more similar than the tables on severance payments imply if a wider notion of 'financial compensation' is used. Also the overlaps with social security schemes make a comparison difficult.

Finally, table 6 presents the situation in different Member States with regard to the restoration of employment.

Table 1(a): Dismissal contrary to Certain Specified Rights

	MEMBERSHIP OF A TRADE UNION/ PARTICIPATION IN TRADE UNION ACTIVITIES	SEEKING, HOLDING OR HAVING HELD OFFICE AS AN EMPLOYEES' REPRESENTATIVE	HAVING ORGANIZED OR TAKEN PART IN LAWFUL INDUSTRIAL ACTION	HAVING LODGED A COMPLAINT OR TAKEN PART IN LEGAL PROCEEDINGS AGAINST AN EMPLOYER	RACE, COLOR, SEX, MARITAL STATUS, SEXUAL ORIENTATION, RELIGION, POLITICAL OPINION, IDEOLOGICAL CONVICTION, OR NATIONAL OR SOCIAL ORIGIN	AGE
BG	X	X	X		X	
CY	X	X	X	X	X	X (not after reaching the retirement age)
CZ	X	X	X	X	X	X
EE	X	X	X	X	X	X
HU	X	X	X	X	X	X
LV	X	X	X	X	X	X
LT	X	X	X	X	X	X
MT	X			X		
PL	X	X	X	X	X	X
RO	X	X	X	X	X (except ideological convictions)	X
SK	X	X	X	X	X	X
SI	X	X	X	X	X	X

Table 1(b): Dismissal contrary to Certain Specified Rights

	PREGNANCY	ABSENCE FROM WORK DURING MATERNITY LEAVE	ABSENCE FROM WORK, ACTUAL OR FORESEEABLE, IN ORDER TO CARE FOR DEPENDANTS	ABSENCE FROM WORK AS A CONSEQUENCE OF COMPULSORY MILITARY SERVICE OR OTHER CIVIL OR POLITICAL SERVICE	TEMPORARY ABSENCE FROM WORK BY REASON OF ILLNESS OR ACCIDENT	CONTRACTING BY PARTICULARLY SERIOUS OR TRANSMISSIBLE DISEASE, APART ALTOGETHER FROM ANY TEMPORARY ABSENCE FROM WORK WHICH IT MAY OCCASIONS
BG	X	X	X	X	X	X
CY	X (dismissal possible in certain cases)	X		X	X	
CZ	X (dismissal possible in certain cases)	X (dismissal possible in certain cases)	X (dismissal possible in certain cases)	X (dismissal possible in certain cases)	X (dismissal possible in certain cases)	
EE	X	X	X (to a certain extent)	X	X	
HU	X	X	X	X	X	X (incapacity due to illness might serve as a ground for dismissal)
LV	X	X	X	X	X	X
LT	X	X	X (with limits)	X	X (with limits)	X
MT	X	X				
PL	X	X	X (with limits)	X	X (with limits)	X
RO	X	X	X (with limits)	X	X	X
SK	X	X		X	X (with limits)	
SI	X (dismissal possible in certain cases)	X (the same rules as for pregnancy)	X	X (if it is up to six months)	X	X

Table 1(c): Dismissal contrary to Certain Specified Rights

	ANY OTHER GROUND WHICH IS DISCRIMINATORY OR IS CONSIDERED AN INFRINGEMENT OF HUMAN RIGHTS OR OF CIVIL LIBERTIES
BG	disability, employee's leave, mothers with a child under three years of age, employees suffering from a special disease, such as tuberculosis, cardiac troubles, psychiatric disease, cancer or occupational disease (prior authorization of the Labour Inspectorate)
CY	
CZ	parental leave (dismissal possible in certain cases during this period), temporary incapacity for night work in an employee works at night (dismissal possible in certain cases during this period)
EE	disability, level of language proficiency
HU	treatment related to a human reproduction procedure
LV	parental leave, leave for educational purposes
LT	language, membership in political parties and public organizations
MT	
PL	Parental leave, educational leave, holidays
RO	genetic characteristics, disability,
SK	
SI	paternity and parental leave (the same rules as for the maternity leave), disability

Table 2: Form of Notice

	NO SPECIFIC FORM REQUIRED	WRITTEN	OTHER	COMMENTS
BG		X		
CY	X (by the employee)	X (by the employer)		
CZ		X		
EE		X		
HU		X		
LV		X		
LT		X		
MT	X	X (if requested by the employee except during the probationary period)		
PL		X		Lack of written form is illegal but effective
RO		X		
SK		X		
SI		X		

Table 3: Period of Notice

	NO	YES	LENGTH AND COMMENTS
BG	X	X	Yes: dismissals on economic grounds, dismissals on objective grounds related to the employee's person – minimum 30 days, collective agreements as well as contracts of employment may stipulate longer periods of notice, up to three months; fixed-term contracts – the period of notice is three months; No: disciplinary dismissal; during probationary period; Resignation – the same rules on the length of periods of notice apply as for the employer;
CY	X	X	Yes: disciplinary dismissal, dismissal for reasons related to the employee's person, economic dismissal – one to eight weeks depending on the length of service with the employer (minimum one week for up to 52 weeks of service, two week for 52-104 weeks of service, ..., eight weeks for 312 weeks of service and more) No: summary dismissal; constructive dismissal; during probationary period Resignation – Yes: one week for 26-52 weeks of service wsith the employer, two weeks for 52-260 weeks of service, three weeks for at least 260 weeks of service; No: in exceptional cases which are then considered as a constructive dismsisal; during probationary period;
CZ	X	X	Yes: in all cases of dismissals, except in case of a summary dismissal on disciplinary grounds (general rule – two months; dismissal for economic reasons – three months; subsidiary employment relationship – 15 days); during probationary period – three days No: summary dismissal on disciplinary grounds Resignation – Yes: two months; subsidiary employment relationship – 15 days; during probationary period – three days; No: in exceptional cases of immediate termination of employment (summary resignation);
EE	X	X	Yes: liquidation – two months; lay-off – two to four months depending on the length of service; unsuitability – one month; long-term incapacity – two weeks; Fixed-term contracts – two weeks for more than one year of service with the employer, five days for up to one year of service; No: disciplinary dismissal; bankruptcy; during probationary period; Resignation – one month (open-ended contracts); in case of a fixed-term contract, the same rules as for the employer apply; during probationary period – three days
HU	X	X	Yes: all dismissals except disciplinary dismissals – minimum 30 days and maximum one year, depending on the length of service No: summary disciplinary dismissal; during probationary period; Resignation – 30 days; No: during probationary period;
LV	X	X	Yes: all dismissals except disciplinary dismissals – one month; ordinary dismissal for disciplinary reasons – 10 days; during probationary period – three days; No: summary (disciplinary) dismissal due to illegal actions performed by the employee during performance of work or due to the employee's condition of alcohol, drug, or other type of intoxication when at work; Resignation – one month; during probationary period – three days; No: in exceptional cases where there are important reasons (summary resignation)
LT	X	X	Yes: all dismissals except disciplinary dismissals – two to four months depending on the length of service; during probationary period – three days; No: disciplinary dismissals; Resignation: 3-14 days;
MT	X	X	Yes: redundancy – from one to 12 weeks, depending on the length of service (one week for 1-6 months of service, two weeks for 6 months-2 years of service, four weeks for 2-4 years of service, eight weeks for more than four years of service, one additional week for

			each subsequent year of service); during the probationary period after one month – one week; No: dismissals for 'good and sufficient cause' (no distinction is made between disciplinary and other reasons related to the employee); during the first month of the probationary period; Resignation – the same rules on the length of periods of notice as for the employer apply;
PL	X	X	Yes: all dismissals except summary dismissals – two weeks to three months, depending on the length of service (two weeks or less than 6 months service, one month for 6 months-3 years, three months for at least 3 years); contract for probationary period – three days to two weeks depending on the length of the probationary period; fixed-term contracts – two weeks; No: summary dismissal; Resignation – the same rules on the length of periods of notice as for the employer apply;
RO	X	X	Yes: all dismissals except disciplinary dismissals – minimum 15 days; for employees with disabilities 30 days; national collective agreement – 20 days; No: disciplinary summary dismissals; during probationary period; Resignation – the same rules on the length of periods of notice as for the employer apply;
SK	X	X	Yes: all dismissals except for disciplinary summary dismissals – two months (general rule); three months for more than five years of service with the employer; Part-time contract with less than 20 hours per week – 15 days; during probationary period – three days; No: disciplinary summary dismissals in exceptional cases; Resignation – two months; during probationary period – three days;
SI	X	X	Yes: all dismissals except summary dismissal – minimum from 30 to 150 days depending on the length of service with the employer and the reason for dismissal (economic reasons from 30 to 150 days; reasons of incapacity from 30 to 120 days; misconduct 30 days); No: in case of a summary dismissal; upon the expiry of the probationary period; Resignation – minimum 30 days (maximum 150 days); during probationary period – 7 days; No: summary resignation in exceptional cases;

Table 4: Obligation to inform the employee of the ground of dismissal

	YES	NO	FORM OF JUSTIFICATION AND COMMENTS
BG	X	X	The disciplinary dismissal has to be justified. In all other ways of termination of the employment contract (mutual consent, dismissal or resignation) the grounds for termination thereof has to be explicitly notified to the worker. The termination of the employment contract has to be made in writing.
CY	X	X	Only in case of collective redundancies where the reasons of dismissal must be given in writing to the employees' representatives.
CZ	X		Except during the probationary period
EE	X	X	Yes, except during probationary period and in case of bankruptcy
HU		X	
LV	X		Except during the probationary period
LT	X		
MT	X		Except during the probationary period
PL	X	X	Yes: open-ended contracts; No: fixed-term contracts; during probationary period
RO	X		
SK	X		
SI	X		in writing

Table 5(a): Severance payments and unemployment benefits

Termination of the contract of employment at the initiative of the employer on the grounds related to misconduct on the part of the employee

	SEVERANCE PAYMENTS	UNEMPLOYMENT BENEFITS
BG	No	Yes (without a waiting period)
CY	No (compensation in the case of unfair dismissal)	Yes
CZ	No	Yes
EE	No	No
HU	No	Yes (waiting period 90 days)
LV	No	Yes (waiting period of two months)
LT	No	Yes (waiting period of three months)
MT	No	Yes
PL	No	Yes (waiting period 7 days)
RO	No	No
SK	No	Yes
SI	No	No

Table 5(b): Severance payments and unemployment benefits

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

	SEVERANCE PAYMENTS	UNEMPLOYMENT BENEFITS
BG	Yes, in some cases, depending on the grounds of dismissal: in case of a disciplinary dismissal (two monthly gross salaries); in case of the employee‘s entitlement to a retirement pension (a minimum of two monthly gross salaries if length of service with the employer is up to 10 years; a minimum of six monthly gross salaries if length of service with the employer is at least 10 years)	Yes
CY	No (compensation in the case of unfair dismissal)	Yes
CZ	Yes, if it is provided for by a collective agreement in relation to the health incapacity of the employee	Yes
EE	Yes, in case of the employee’s unsuitability for work (one month’s average earnings)	Yes
HU	Yes	
LV	Yes	Yes
LT	Yes, from one to six monthly average wages depending on the length of service	Yes
MT	No	Yes
PL	No	Yes (waiting period of seven days)
RO	Yes, according to the collective agreement at the national level (compensation of 50% of the employee’s monthly salary in addition to any other payments); other collective agreements can provide for more favourable payments	Yes
SK	Yes, in case of health reasons (if an employee has at least 5 years of service with the employer, a severance payment amounts to three average monthly salaries)	Yes
SI	Yes (depending on the length of service: 1/5 of the monthly earnings for each year of employment with the employer including the employer’s predecessors, if the employee has been employed with the employer for 1-5 years; 1/4 of the monthly earnings for each year if 5-15 years; 1/3 of the monthly earnings for each year if more than 15 years, but not more than ten monthly wages)	Yes

Table 5(c): Severance payments and unemployment benefits

Dismissal for economic reasons

	SEVERANCE PAYMENTS	UNEMPLOYMENT BENEFITS
BG	Yes (a minimum of 1 monthly gross salary)	Yes
CY	Yes (employee is entitled to compensation, which cannot exceed 75,5 weeks' pay)	Yes
CZ	Yes (2 months average earnings; higher amounts may be provided for by collective agreements)	Yes
EE	Yes (2-4 months' average earnings depending on the length of service)	Yes
HU	Yes (from 1 month to 6 months' average earnings depending on the length of service)	Yes
LV	Yes	Yes
LT	Yes - see table 5(b)	Yes
MT	No	Yes
PL	Yes (one month's earnings for up to 2 years of service; 2 months earnings for 2-8 years; 3 months earnings for more than 8 years)	Yes
RO	Yes - see table 5(b)	Yes
SK	Yes - see table 5(b)	Yes
SI	Yes - see table 5(b)	Yes

Table 6: Restoration of Employment

	Termination of the contract on the initiative of employer on grounds related to misconduct	**Termination of the contract on the initiative of employer for reasons related to the attributes of the employee excluding those related to misconduct**	**Dismissal for economic reasons**
BG	Yes, in all cases of unlawful dismissal if the claimant (the dismissed employee) has requested it.	Idem	Idem
CY	If the dismissal is deemed to be unfair, reinstatement or reengagement may be ordered; however, this power is merely theoretical, since there is no reported case so far in which reinstatement was ordered.	Idem	Idem
CZ	If the court finds that the dismissal is invalid and the employee requests the reintegration, the employment relationship continues to exist, the employee is reinstated and the compensation is ordered for the entire period of time as well.	Idem	Idem
EE	Yes, at the employee's request.	Idem	Idem
HU	Yes, reinstatement is the main remedy ordered by the court. Exception: If the employee does not request reinstatement or if the employer requests not to reinstate the employee, the court orders the payment of compensation instead (2-12 months' average earnings).	Idem	Idem
LV	Yes at the employee's request.	Idem	Idem
LT	Reinstatement is the main remedy; yet, the court may order compensation instead if the reinstatement is impossible due to objective or subjective reasons.	Idem	Idem
MT	Reinstatement/reengagement or compensation may be ordered, yet the latter is more frequent.	Idem	Idem
PL	Yes.	Idem	Idem
RO	Yes, at the employee's request.	Idem	Idem
SK	Yes, at the employee's request.	Idem	Idem
SI	Yes, as a rule, but a compensation instead of a reintegration may be ordered by the court (at the employee's request if he or she does not wish to continue the employment, or without the request of the employee, at the request of the employer, if the continuation of employment relationship is not possible taking into account all circumstances and the interests of both parties).	Idem	Idem