TERMINATION OF EMPLOYMENT RELATIONSHIPS – THE LEGAL SITUATION IN BULGARIA

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The content of this study report reflects the legal situation of the termination of employment relationships in Bulgaria by 10 April 2006.

List of abbreviations

CL	-	Commercial Law
D.	-	Directive
EEC	-	European Economic Community
EPL	-	Employment Promotion Law
EU	-	European Union
ILO	-	International Labour Organization
LC	-	Labour Code
OJ	-	Official Journal
SCC	-	Supreme Court of Cassation

SUMMARY

The legal regulation of termination of the employment relationships in Bulgaria has undergone serious changes since the beginning of the democratic changes in the country at the end of 1989. They are mainly directed at its approximation to the European and universal international standards.

1. Sources of Law

The sources of law are: the Constitution, international conventional instruments, the law, the collective labour contract, the individual labour contract and the jurisprudence.

The main domestic law source of the legal regulation of termination of the employment relationships in Bulgaria is the law – the Labour Code of 1986 and its subsequent essential amendments of 1992, 2001, 2002, 2003, 2004 and 2005. The major part of this regulation is imperative. This conditions the modest role the collective labour contract and the individual one have in the termination of individual employment relationships.

The usage is not a source of termination of employment relationships.

Bulgaria has ratified the European Social Charter, revised in 1996, and is bound by its Art. 24 on the right to legal defence in dismissal.

2. Field of application of the provisions regarding the termination of employment relationships. Specific rules.

Depending on the field of application, the general regime of termination of the labour contract is divided in three groups:

a) Termination of the labour contract by mutual consent and other general grounds;

b) Termination of the labour contract on the employer's initiative by way of:

- dismissal with a notice (objective grounds)
- dismissal without a notice (disciplinary dismissal and other grounds)

c) Termination of the labour contract on the employee's initiative (resignation) with or without a notice.

There exist specific rules on the termination of employment relationships provided for employees who hold technical or expert positions in the State and municipal administration and for lecturers in higher-education institutions.

There also exist specific rules on the termination of the probation labour contract and the labour contracts for extra work.

3.1. Mutual consent

The operative Bulgarian labour law regulates two forms of terminating a labour contract by mutual consent: an ordinary one and termination of the labour contract by mutual consent with a compensation.

3.2. Termination on non-imputable grounds, at the will of the parties to the contract

Either party may take the initiative in terminating the labour contract on non-imputable grounds, at the will of the parties to the contract, which are exhaustively enumerated in Art. 325 LC. They are:

- in dismissal recognized as a wrongful one;
- by expiry of the term agreed for the termination of labour contracts of definite duration;
- where the job position is provided for a pregnant woman-employee or an employee with reduced capacity for work who is reassigned to a suitable job;
- the employee's disease;
- the employer's death where an *intuitu personae* contract has been concluded with him/her;
- the employee's death;
- determining the position as one for being held by a civil servant.

3.3. Dismissal of the employee

General view: Dismissal is the termination of the labour contract by way of the employee's unilateral expression of will. It is built up on the principle of lawfulness of the grounds for dismissal. The dismissal is accomplished by way of a written "order of dismissal", issued by the employer.

3.3.1. Dismissal contrary to some specific rights or public liberties

Such are the dismissals for reasons of nationality, origin, sex, political and religious beliefs, of pregnant women, employees during a strike, trade union activists without permission from the respective trade union body.

3.3.2. Dismissal without a notice: Disciplinary dismissal

It is accomplished where the employee has committed a serious disciplinary violation, after the employer has heard out his/her oral or written explanations. Examples of serious disciplinary violations are shown in Art. 190, para. 1 LC. The disciplinary dismissal is accomplished in accordance with a specific procedure fixed in law.

Other grounds for dismissal without a notice are the following ones:

- detention of the employee for serving the punishment of imprisonment;
- deprivation of the employee of the right to hold the position he/she has been appointed to, this deprivation being either an administrative or a judicial one;
- revocation of the scientific title or degree;
- refusal on the part of a person with reduced capacity for work who is reassigned to a suitable job to take the offered position.

3.3.3. Dismissal with a notice for reasons connected with the employee's personality

They are exhaustively enumerated in Art. 328 LC: absence of the required professional qualities, educational or vocational training, reinstatement of a wrongfully dismissed employee, early discharge from compulsory military service, acquisition of

a right to pension, change in the requirements regarding the performance of work, objective impossibility to perform one's labour contract.

The term of the notice in the dismissal of an employee working under a labour contract of indefinite duration is 30 days. The parties are free to agree a longer term. As for labour contracts of definite duration, the term of the notice is 3 months.

3.3.4. Dismissal on economic grounds with a notice

They are exhaustively enumerated in Art. 328 LC: close of a whole or a part of the enterprise, staff reduction, decrease in the amount of work, suspension of work for more than 15 working days, changing the place of the enterprise, a concluded management contract.

The employee's dismissal on economic grounds is accomplished with a notice.

The employee's dismissal with a notice on certain economic grounds is accompanied by the employer's "right to selection".

Preliminary protection in dismissal.

It consists in obtaining preliminary permission from state bodies (the Labour Inspectorate) or public bodies (trade unions) specified in law. This legal defence is:

- general preliminary protection;
- preliminary protection of women-employees who are pregnant or are using their pregnancy and childbirth leave of absence;
- preliminary protection of trade union activists.

Collective dismissal.

The legal regulation of collective dismissal is contained in Art. 130a and § 1, item 9 LC and Arts. 24-25 of the Employment Promotion Law and was created in compliance with the requirements of D. 75/129 EEC, D. 92/56 EEC, the consolidating D. 98/89 EEC and the ILO Convention No. 158 of 1982.

3.4. Resignation of the employee.

A. With a notice.

It is conducted upon the request of the employee *ad nutum*.

B. Without a notice.

It is conducted only on the grounds which are exhaustively enumerated in law (Art. 327 LC). These grounds are:

Reasons lying in the employer: delay in paying the labour remuneration, considerable deterioration of the labour conditions, etc.;

Reasons lying in the employee: serving his compulsory military service, continuation of the education, transfer from a job under a labour contract of definite duration to a job under a labour contract of indefinite duration, etc.;

4. General questions regarding all forms of termination of employment relationships:

Neither is there a special regulation of the conventions of non-competition, nor does an arrangement exist for a receipt for settlement of the accounts in Bulgarian Labour Law.

But there are also special regulations about some other general questions, such as:

- written form;

- point of time in which the employment relationship is terminated;
- delivery of the labour record;

Concluding remarks

The following *inferences* are made:

- regarding the traditionally existing legal regulation of termination of employment relationships, its complexity and the legal defence provided against arbitrary and wrongful dismissals;

The *tendencies* in its development are outlined:

They consist in its extensive and intensive development through extending the grounds for termination of employment relationships, complication of the regulation, introduction of greater flexibility and legal defence of the employees in dismissal, setting up procedures of information and consultations, borrowed from the directives of the European Union, the European Social Charter and the ILO Convention No. 158 of 1982;

Proposals for improvement are formulated.

They concern the introduction of certain new grounds for imparting greater flexibility and openness to the operative system, extending the preliminary protection against dismissal, enriching the legal defence against wrongful dismissals, extending the procedures of information and consultations in dismissal, ratification of the ILO Convention No. 158 on dismissal of 1982, etc.

CONTENTS

(2) Preliminary Procedures
(3) Consequences of the Dismissal
(4) Ways of Contestation
(5) Suspension of the Consequences of the Dismissal
(6) Reintegration
(7) Sanctions
(8) Collective Labour Contracts

Other Grounds for Dismissal without a Notice

3.3.3. Dismissal with a Notice for Reasons Connected with the Employee's Personality

Grounds for Dismissal with a Notice

Dismissal for reasons connected with the employee's personality

(1) Substantive Conditions
(2) Preliminary Procedures
(3) Consequences of Dismissal
(4) Ways of Contestation
(5) Suspension of the Consequences of the Dismissal
(6) Reintegration
(7) Sanctions
(8) Collective Labour Contracts

3.3.4. Dismissal on Economic Grounds with a Notice

(1) Substantive Conditions
(2) Preliminary Procedures
(3) Specific Procedures for Collective Dismissals
(4) Consequences of Dismissal
(5) Ways of Contestation
(6) Suspension of the Consequences of the Dismissal
(7) Reintegration
(8) Sanctions
(9) Collective Labour Contracts
(10) Special Regimes
a) Insolvency
b) Transfer of the enterprise
c) Close of the enterprise (Art. 328, para. 1, item 1 LC)

3.4. Resignation of the Employee

Termination with a Notice

(1) Substantive Conditions
(2) Abandonment of the Job
(3) Preliminary Procedures
(4) Consequences of the Resignation
(5) Ways of Contestation
(6) Compensation Paid to the Employer
(7) Simulated Resignations
(8) Resignation on Fair Grounds: Resignation without Notice

4. General Questions Regarding All Forms of Termination of Employment Relationships

(1) Conventions of Non-Competition
(2) Convention of Non-Suspension of the Labour Contract by the Employee during a Certain Period of Time
(3) Delivery of Reference and Recommendation
(4) Receipt for settlement of the account (Reçu pour solde de tout compte)
(5) Other General Questions
Written Form
Point of Termination of the Employment Relationship
Delivery of the Labour Record

Concluding Remarks
A. Inferences
B. Tendencies
C. Proposals for improvement

INTRODUCTION

1. The termination of employment relationships in Bulgaria traditionally forms a subject matter of legal regulation. It used to be contained in the Labour Contract Law of the year 1936 (Arts. 57-69, repealed), the Labour Code of 1951 (Arts. 29-38, 90-94, repealed) and in the operative Labour Code of 1986, which has been given considerable attention (Arts. 325-346).[1]

2. The termination of employment relationships poses to the parties questions of great social importance. As for the employees, it is of existential importance and is connected with their labour incomes, from which they provide the means of support for themselves and their family members, and the quality of life as well. As for the employer, it is an expression of his/her employer's power and a matter of having the production effectiveness increased.

3. In the recent 16 years of transition from totalitarian to democratic society and from centralized State planned economy to market economy, based on private ownership, relatively high unemployment[2], uncertainty and poverty of large social strata, the social sensitiveness and topicality of the termination of employment relationships in Bulgaria has considerably increased.

4. The basic interests of the employer and the employees in the termination of employment relationships are contradictory ones. The employer aims at having greater freedom in terminating the employment relationships in accordance with his/her own will in order to provide the profitable activity of the enterprise, while the employees aim at preserving their job as a value and a source of incomes and means of existence.

5. The legal regulation focuses on two conflicting tendencies: the flexibility in the management of employment relationships, this flexibility finding its legal expression in the greater freedom of the employer in the termination thereof, and the striving of the employees to preserve their employment as an essential part of their security in life.

6. Following the beginning of the democratic changes in the country of the late 1989, the national legal regulation of the termination of employment relationships underwent considerable changes in the years 1992, 2001, 2002, 2003, 2004 and 2005. These changes were introduced in performance of the Europe Agreement on association between the European Communities and their member states, on the one part, and Bulgaria, on the other part, effective since 1 February 1995. According to Arts. 69 and 70 of this Agreement, Bulgaria was obliged to approximate its current and future legislation with the Community's legislation in a number of explicitly

[1] **R. Oshanov**, Pravnata zakrila na truda v Bulgaria (Legal Protection of Labour in Bulgaria), Sofia, 1943, pp. 137-142, 214-234; **L. Radoilski**, Trudovo pravo na Narodna Republika Bulgaria (Labour Law of the People's Republic of Bulgaria), Sofia, 1957, pp. 540-584; **V. Mrachkov**, Trudovo pravo (Labour Law), 4th ed., Sofia, 2004, pp. 533-652

[2] According to the official data of the Ministry of Labour and Social Policy, the unemployment in March 2006 was 10.50 percent of the active population and amounted to 380,000 people. Unemployment has decreased by 0.87 percent in comparison with January 2006 ("Labour" Newspaper dated 10 April 2006, p. 5)

specified spheres, one of them being the “legal defence of workers at the workplace”, i.e. the sphere of employment relationships. On the grounds of performing this obligation, on 25 April 2005 the Treaty of Bulgaria’s EU accession from 1 January 2007 was signed between Bulgaria and the European Union (prom. OJ, No. 42 of 2005).

1. SOURCES OF LAW

7. The sources containing the legal regulation of the termination of employment relationships can be divided in two groups: 1. sources of domestic law; 2. sources of international labour law.

8. The sources of law are: the Constitution, international conventional instruments, the law, the collective labour contract, the individual labour contract and the jurisprudence.

(1) Constitutional Value of the Standards on the Right to Work

9. The operative Constitution of 12 July 1991 does not contain explicit provisions regarding the termination of employment relationship, however, it lays down general norms on the protection of employment and the recognition of the citizens’ right to work, the termination of employment relationships forming part of the said norms. These norms are contained in Arts. 16 and 48, para. 1 of the Constitution.

According to its Art. 16 “Labour is guaranteed and protected by law”.

And Art. 48, para. 1 of the Constitution reads as follows:

“(1) Citizens are entitled to work. The State takes care of the creation of conditions for the exercise of this right.”

The said provisions form the Constitutional grounds on which the operative legal regulation of termination of employment relationships is built up. The “guarantee and protection of labour” and “the care” for creating conditions for the exercise of the citizens’ constitutional right to work within the meaning of Arts. 16 and 48, para. 1 of the Constitution, respectively, comprise the legal regulation of the protection of labour in the termination of employment relationships.

10. The Constitutional ideas of labour protection find their continuation in the activity of the Constitutional Court, which was set up under the Constitution and has been operative since 1 October 1991. It gives authoritative interpretations of the Constitution, conducts subsequent supervision of the constitutionality of the adopted laws and their conformity with those international treaties which Bulgaria is a party to (Art. 149, para. 1, items 1, 2 and 4 of the Constitution). The Constitutional regulation of the protection of the right to work and the jurisprudence of the Constitutional Court form the “Constitutional block” through which the supremacy of the Constitution and

the constitutionalizing of labour law are implemented, this being one of the general tendencies in the development of labour law in recent years.[3]

(2) Instruments of International Conventional Law

11. As for the sources of international labour law concerning the termination of employment relationships, only the revised **European Social Charter** of 1996 has been ratified by Bulgaria through a law. Its ratification took place in the year 2000 and has been effective since 1 August 2000.[4] Art. 24 concerning the right to legal defence in dismissal (the only Art. of the quoted law) is among the provisions binding for Bulgaria by virtue of the ratification of the Charter.

According to Art. 5, para. 4 of the Constitution, those ratified international treaties which have been promulgated in the OJ and have taken effect for the country form part of its domestic law. They have priority over the norms of domestic legislation which contravene them.

In spite of their not being legally binding in the domestic legal order, in the process of approximation of domestic law to the European and universal international standards and in creating new regulation in the sphere of termination of employment relationship, the competent State bodies are governed by the Charter of Fundamental Rights of the European Union (Art. 30), the Community Charter of the Fundamental Social Rights of Workers (Arts. 17-18), and also by the ILO Convention No. 158 (1982) Termination of Employment Convention and Recommendation No. 166 (1982) accompanying the Convention.

12. Although the number of the ratified ILO Conventions which are operative in Bulgaria is comparatively large (77)[5], the country has not yet ratified the Convention (No. 158) on dismissal, 1982, although the operative legislation meets its requirements to a large extent (see No. 183 below).

13. The **law** is the main source laying down the legal regulation of terminating the employment relationship. "The law" is primarily the Labour Code (LC) of the year 1986 (prom. OJ, Nos. 26 and 27 of 1986, am.), effective since 1 January 1987. Its Chapter XVI "Termination of the Employment Relationship", Arts. 325-346 and others of its provisions (Arts. 220, 225, 226, etc.) contain the essential substantive, processual and procedural provisions regarding the termination of employment relationships. The regulation is codified and exhaustive. In principle, it consists of imperative legal norms. Provisions regarding separate issues relating to the termination of employment relationship are contained in other laws as well – the Employment Promotion Law, the Higher Education Law, etc.

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[3] **Sn. Nacheva**, Constituzionnata zivilisazia i bulgarskiat constituzionalisam (Constitutional Civilization and Bulgarian Constitutionalism), Part I, Sofia, 2004, pp. 117-119; **V. Mrachkov**, Constituzionalisirane na trudovoto pravo (Labour Law Constitutionalizing), "Labour and Law" Digest, December 2005, pp. 18-28

[4] The Law on the ratification of the European Social Charter is promulgated in the OJ, No. 30 dated 11 April 2000.

[5] Document d'information sur les ratifications et les activités normatives, rapport III (2), Conférence Internationale du Travail, 95 session, 2006, BIT, 2006, 81, 103

(3) Sources of Law and Their Hierarchy

14. Owing to the primarily imperative nature of the legal regulation of the termination of employment relationships (see No. 13 above), the **collective labour contracts** in this field of study have a limited sphere of application. It is only in the cases explicitly provided in law that certain matters of the preliminary protection in dismissal may be settled in the collective labour contracts (Art. 333, para. 4 LC – see No. 84 below).

15. In view of the above considerations (see No. 13 above), the individual labour contract may settle only those matters which regard the term of the notice given in termination of a labour contract of indefinite duration (Art. 326, para. 2, sentence 1 and Art. 328 LC – see No. 90 below).

16. The sources regulating the termination of employment relationships are arranged in the following hierarchical order: 1. The Constitution; 2. European Social Charter; 3. Laws: Labour Code, Law on Higher Education; 4. Collective labour contract; 5. Individual labour contract; 6. Jurisprudence.

(4) The Role of the Jurisprudence and the Usage

17. The jurisprudence has been playing the leading role in the interpretation and application of the normative sources relating to the termination of employment relationships. The disputes regarding wrongful dismissal and compensations due in terminating the employment relationship are considered by the regional courts and, by way of the instance appeal, a large part thereof reach the Supreme Court of Cassation (Arts. 344, 357 and 360 of the LC and Art. 218a of the Civil Procedure Code). According to the internal distribution of the activities of the Supreme Court of Cassation (SCC), the 3rd Civil Department of the SCC is competent to consider them. The annual number of decisions rendered by this Department ranges between 2,000 and 2,400 and the largest part thereof (about 85 percent) concern disputes on wrongful termination of employment relationships.[6] Thus, the legal regulation regarding the termination of employment relationships has not only established itself as one of the major parts of labour law, but also became justiciable, i.e. it has turned into law applicable by the courts.

18. Usage is not a source of law regarding the termination of employment relationship in Bulgaria.

[6] Since the year 1997 the practice of the SCC regarding labour disputes has been the subject matter of critical analysis year by year (See V. Mrachkov, Kritichen pregled na praktikata na Varhovnia Kassatsionen Sad za 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004 (Critical Review of the Jurisprudence of the Supreme Court of Cassation for the years 1997, 1998, 1999, 2000, 2001, 2002, 2003 and 2004), published in the "Juridical World" Journal, 1999, No. 1, pp. 249-275, No. 2, pp. 205-231; 2000, No. 2, pp. 192-223; 2001, No. 2, pp. 155-189; 2002, No. 2, pp. 178-211; 2003, No. 2, pp. 120-154; 2004, No. 2, pp. 178-203; 2005, No. 2, pp. 116-149). Further on the "Critical Review of the Jurisprudence of the Supreme Court of Cassation…" will be quoted in the following way: "Review-98", where "Review" denotes "Critical Review of the Jurisprudence of the Supreme Court of Cassation in Labour Disputes", and the number "98" denotes the calendar year, in this case the year 1998, etc., this being the year of rendering the court decision invoked by the exposition.

2. FIELD OF APPLICATION OF THE PROVISIONS REGARDING THE TERMINATION OF EMPLOYMENT RELATIONSHIPS. SPECIFIC RULES.

General Remarks

19. The general legal regulation of the termination of employment relationship is contained in Arts. 325-346 LC. It applies to those persons who perform dependent (hired) labour – those working under employment relationships, i.e. employees (workers) in the precise juridical meaning of this term.

20. In principle, the general legal regulation is applied to the termination of all employment relationships, regardless of the type of property with which the enterprise carries on its activities (private or public property), the size of the enterprise, the branch in which the employees perform the activities, etc., with some exceptions or specifics (see (2), (3), (4), (5) below).

21. The regulation of termination of employment relationships does not apply to civil servants, nor does it apply to the employees in the army, the police or the judiciary. Their relationships are not private law employment ones, but rather public law-administrative ones. Their termination is regulated in the respective administrative laws: the Civil Servant Law (prom. OJ, No. 67 of 1999, am.); the Law on Defence and Armed Forces (prom. OJ, No. 112 of 1995, am.); the Law on the Ministry of the Interior (prom. OJ, No. 122 of 1997, repealed, the new Law of the same title and subject of regulation was promulgated in the OJ, No. 17 of 2006, effective date 1 May 2006); the Law on the Judiciary (prom. OJ, No. 59 of 1994, am.), etc.

22. The legal regulation of termination of employment relationships arising from a labour contract is contained in Arts. 325-335, 344-346 LC.

(1) Forms of Termination of Labour Relationships

23. The legal regulation of termination of labour relationships concerns the termination of the labour contract. This is the most circumstantial legal regulation regarding the termination of employment relationships, this being due to the place which the labour contract has. The internal differentiation within this regulation is made with respect to the party to the contract on whose initiative the contract is terminated.

This regulation comprises: general regime and specific rules on the termination of certain labour contracts. Each of them has its own field of application.

24. Depending on the field of application, the general regime of termination of labour contracts is divided in three groups:

a) Termination of the labour contract by mutual consent and on other general grounds. They are exhaustively laid down in Art. 325 and Art. 331 LC. In these cases the labour contract is terminated without giving a notice;

b) Termination of the labour contract on the employer's initiative by way of dismissal with or without a notice (Art. 328 and Art. 330 LC);

c) Termination of the labour contract on the employee's initiative (resignation) with or without a notice (Art. 326 and Art. 327 LC).

25. The judicial termination of employment relationships is unknown to the operative Bulgarian labour law.

(2) Exclusion or Specifics Arising from the Nature of the Employer or the Branch of Activity

26. There exist specific rules on the termination of certain employment relationships. Such particular rules are provided for those employees who hold technical or expert positions under employment relationships in the State and municipal administration and for lecturers in higher-education institutions.

27. The presence of specific grounds for the termination of the employment relationships with employees in the State and municipal administration (Art. 330, para. 2, items 7 and 8 LC) is conditioned by the fact that they are engaged in the public administration. These grounds are:

a) Non-performance of these employees' obligation to notify the employer of the presence of an hierarchical connection between the management and the supervision, on the one hand, and, on the other hand, the spouse, lineal relatives of any degree, collateral relatives within the 4th degree, or relatives by marriage within the 4th degree, or the presence of any other incompatibility with the performance of their labour obligations – exercising the activity of a sole trader, or performing the official duties of deputies, municipal councillors, or holding leadership positions in political parties – which the law deems inconsistent with their position of public administration employees (Art. 330, para. 2, item l in connection with Art. 126, item 12 LC).

b) Presence of the said incompatibility (see "a" above). The idea of these grounds is to disallow the establishment of connections and relations between the public administration employees that may have a negative impact upon the objective performance of their official duties, or may diminish the control over their performance, or may allow for the occurrence of any other negative consequences.

28. According to the operative Bulgarian legislation, **the scientific research and lecturing staff** (assistants, assistant professors and professors) are employees under an employment relationship, and not state servants. However, their employment relationships have their particularities, which are regulated in Arts. 48-59 of the Law on Higher Education (prom. OJ, No. 112 of 1995, am.). The particularities regarding their termination form a part thereof (Arts. 58, 59 and 59a of the quoted Law). They consist in laying down certain specific grounds for the termination thereof on the part of the employer: lack of sufficient occupancy rate, plagiarism of scientific works, two consecutive negative references concerning the scientific research and lecturing activity under Art. 58, para. 1, items 3, 4 and 6 of the quoted Law, as well as certain cases of serious disciplinary violations, exhaustively enumerated in the Law on Higher Education, disciplinary dismissal being necessarily imposed upon the commitment

thereof, such as: putting a mark to a student without holding an examination, putting a mark to a student by a person who has no right to examine him/her, issue of a document of false content of completed education (Art. 58a, para. 1 of the quoted Law). Apart from these particularities, the other matters regarding the termination of employment relationships with the scientific research and lecturing staff of higher education institutions are governed by the general provisions of the Labour Code on termination of employment relationships (Art. 59a of the quoted Law).

(3) Exclusion or Specifics Arising from the Type of Labour Contract

Probation Labour Contract

29. The operative legal regulation of the probation labour contract is contained in Arts. 70-71 of the Labour Code.

30. The probation labour contract may precede the conclusion of a labour contract of definite or indefinite duration. If the probation contract does not explicitly specify the type of the final labour contract in view of which it is made, it is presumed that the probation contract has been made in view of a final labour contract of indefinite duration, as the latter is the usual type of contract concluded between the parties. This is an irrefutable presumption.

31. The probation labour contract is concluded in a written form. This is a general rule on the conclusion of labour contracts in Bulgarian labour law (Art. 62, para. 1 LC). The written form is also the *ad solemnitatem* form in concluding a probation labour contract.

32. The maximum length of the probation labour contract is 6 months. This maximum length is common to all types of work and activities and is independent of the nature of the work the contract is made for. It is within the limits of this maximum length that the parties are free to agree the length of the specific labour contract for probation they conclude in the specific case. If the parties have not explicitly specified the length of the probation labour contract, it is presumed that the latter is made for the maximum length. This is an irrefutable presumption.

33. The main particularity of this contract is its probation clause. It may be agreed in favour of the employer (most often), the employee (in rare cases), or the two parties. The party in favour of which the probation is agreed has to be explicitly specified. If that has not been done it is presumed that the probation contract is concluded in favour of both parties. This is an irrefutable presumption (d. 602-03-III c.d.).

34. Within the probation term the employment relationship existing between the parties is a normal and perfect one. During that time the employee has all the rights and obligations under the employment relationship: the right to labour remuneration, agreed working time, rests and leaves of absence, this time being recognized as length of service, obligatory insurance against all social risks, etc. And the employer is

obliged to create normal conditions for the employee to perform the specific job, to pay labour remuneration to him/her, etc.

35. There also exist particularities in the termination of the probation labour contract. They are based on the probation stipulation. The party in favour of which the probation is agreed may terminate it unilaterally, without a notice, at any time until the probation term expires, provided that the said party has sufficient grounds for making its judgement (d. 2-97-III c.d.). The expression of will has to be clear and unconditional, and it is not necessary for it to be motivated. No special form is explicitly provided for it, however, since the contract has been concluded in writing, the said expression of will should also be made in writing. If the probation has been agreed in favour of the two parties, either of them is entitled to terminate the contract wherever, from its own point of view, the party finds it necessary to do so.

If, within the limits of the stipulated term, the party in favour of which the probation is agreed fails to give an expression of will for the termination of the probation labour contract, the latter is regarded as being finally concluded. According to law, what follows from the silence of the said party is the presumption that the result of the probation has been positive and the party is willing to conclude a final labour contract of either indefinite or definite duration, depending on the agreement between the parties. This is an irrefutable presumption.

36. The parties may also conclude a final contract during the time of probation if the party in favour of which the probation is agreed finds that the probation has passed successfully and it is not necessary to wait for the whole probation term to expire. In these cases the labour contract has to be concluded explicitly and in a written form.

Specific Grounds for Termination of Labour Contracts for Extra Work

37. Bulgarian labour law allows the conclusion of the so-called “labour contracts for extra work”. This means that, apart from the basic full-time employment relationship, another employment relationship of the employee is also present, the working time under it being no longer than 4 hours a day, so that the employee’s uninterrupted daily rest of 12 hours and the uninterrupted weekly rest of 48 hours are not violated (Arts. 152 and 153 LC). The labour contracts for extra work may be concluded with the employer of the basic employment relationship – for work different from the agreed labour function under the basic employment relationship, and performed out of his/her working time (Art. 110 LC) – or with another employer, the so-called external work under a part-time employment contract (Art. 111 LC). The employment relationships for extra work may be terminated under the general procedure laid down in the Labour Code (see Nos. 40-154 below) as well as *ad nutum* – by a unilateral expression of will upon a 15 days’ notice given by either party (Art. 334 LC). In principle, the term of the notice is worked off by the employee, however, if a party so wishes, the labour 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 under Art. 220 LC.

(4) Exclusion or Specifics Arising from the Personality of the Employer

38. There isn't any exclusion or specifics arising from the personality of the employer except for the collective dismissals (see Nos. 124-129 below).

(5) Exclusion or Specifics Arising from the Personality of the Worker

39. There isn't any exclusion or specifics arising from the personality of the worker except for the preliminary protection in dismissal (see Nos. 100-105 below).

3.1. MUTUAL CONSENT

General Remark

40. Mutual consent to the termination of an employment contract best complies with its contractual nature: created by the common will of the parties, it is only natural for it to be terminated by the mutual consent of the parties, where each of them is satisfied with the outcome.

The operative Bulgarian labour law regulates two forms of terminating a labour contract by mutual consent: ordinary one and termination of the labour contract by mutual consent with a compensation.

A. Ordinary mutual consent (Art. 325, item 1 LC).

(1) Substantive Conditions

41. In practice, ordinary mutual consent forms the most frequently applied general grounds for the termination of a labour contract.

The proposal for the termination may be made by either party. However, it is usually made by the employee to the employer. This is the "classical" grounds for terminating the labour contract. In rare cases the proposal is made by the employer to the respective employee.

The proposal constitutes a unilateral expression of will for the termination of the labour contract. It has to be formulated clearly and unconditionally. It should show the will of the party making the proposal to have the labour contract terminated by mutual consent.

42. The proposal for termination of a labour contract by mutual consent is made in writing to the other party to the labour contract. It is not necessary for the proposal to specify the motives. However, in practice, the party which takes the initiative for the termination of the labour contract by mutual consent often states the motives. The objective thereof is to persuade the other party to give its consent to the termination of the labour contract.

(2) Preliminary Procedures

43. The party to which the proposal for termination of the labour contract is made is obliged to form its opinion within 7 days following the receipt thereof, and to communicate it to the party which has made the proposal. If the latter accepts the proposal, the labour contract is terminated. If it explicitly states its dissent regarding the proposal that has been made, the labour contract is not terminated. If the party fails to reply within the 7 days' term, it is assumed that the proposal has not been accepted. This is the presumption of silence as an expression of dissent, this presumption being fixed in law. This is an irrefutable presumption (*praesumptiones juris et de jure*).

(3) Consequences of the Consent

44. The consent given by the party to which the proposal is made after the expiry of the term may not condition the termination of the labour contract by mutual consent. And yet, if the labour contract is terminated, the termination is contrary to law (d. 1814-2000-III c.d.).[7]

(4) Contestation of the Consent

45. The worker is entitled to lodge a claim before the court against the mutual consent if he considers it illegal, wrongful or invalid within the framework of the legal defence against wrongful dismissal (Art. 344, para. 1 LC).

(5) Vices of the Consent

46. The general principles of the invalidity of contracts are applicable.

(6) Sanctions

47. If the consent of the employee is wrested by the employer with coercion, menace or fraud, the latter may be punished by a fine (Art. 414 LC).

(7) Collective Labour Contracts

48. Collective labour contracts do not play a role in the termination of labour relations by mutual consent.

(8) Relations with Other Forms of Termination

49. Mutual consent is a separate ground for termination of labour contract which should not be confounded with the other grounds for the termination of labour contract.

Mutual consent with a compensation (Art. 331 LC).

[7] This is the generally accepted way in which the decisions of the Supreme Court of Cassation are quoted. These numbers mean the following: Decision (abbreviated "d") No. 1814 of the year 2000 of the 3rd civil department (abbreviated to "c.d.") of the SCC. "Third civil department" is the department of the Civil Chamber of the Supreme Court of Cassation of the Republic of Bulgaria specialized in labour disputes. This is the way in which the decisions of the SCC will be quoted in the exposition hereinafter.

50. It was introduced through the 2001 amendments to the Labour Code. In this case the initiative in the termination of the labour contract by mutual consent may be taken only by the employer. The written proposal made by the employer to the employee for the termination of the labour contract by mutual consent is accompanied by a proposal for a compensation. The minimum amount of the latter is 4 gross monthly salaries. The parties may agree a greater compensation for the "redemption" of the consent. The employee the proposal is made to is obliged to form his/her opinion within 7 days following the receipt thereof, and to communicate it to the employer in writing. If the employee accepts the proposal, the labour contract is terminated. It is within 1 month following the termination of the labour contract that the employer has to pay the agreed compensation to the employee. If the employer fails to perform this obligation, the labour contract is deemed as not being terminated, because the grounds for termination have ceased to exist, and the employee may take his/her previous job and the employment relationship is resumed. If the employee does not accept the proposal made by the employer, the labour contract is not terminated and the employment relationship between the parties continues to exist.

If the employee is tacit and does not reply to the employer within 7 days following the receipt of the proposal, regardless of the reasons for it, it is assumed that the employee disagrees with the proposal. Here again the law has laid down the presumption of silence as dissent. This is an irrefutable presumption (*praesumptiones juris et de jure*).

51. During the 5 years since their introduction, the grounds under Art. 331 LC have found a comparatively wide application for the well-off employers. These grounds save the employers the dismissed employees' discontent and the judicial disputes with them. And the latter accept it because of the larger amount of money they receive as a lump sum upon the termination of the labour contract. In practice, the agreed compensations are usually larger than the minimum ones provided for in law and reach up to 10-12 gross monthly salaries and even more.[8]

3.2. Termination on Non-Imputable Grounds, at the Will of the Parties to the Contract (Art. 325, items 2-12 LC)

52. Either party may take the initiative in terminating the labour contract on non-imputable grounds, at the will of the parties to the contract – under Art. 325, items 2-12 LC, whenever they are present in the specific case.

(1) Grounds for Termination of the Contract Provided for in Law (Art. 325, items 2-12 LC)

53. *In dismissal recognized as a wrongful one* (Art. 325, item 2 LC)

The operative legislation provides the dismissed employee with the right to seek from the court: a) recognition of the dismissal as a wrongful one and its revocation (Art. 344, para. 1, item 1 LC); b) reinstatement of a wrongfully dismissed employee in the previous job (Art. 344, para. 1, item 2 LC). In the first case (item "a")

[8] **V. Mrachkov, K. Sredkova, A. Vassilev**, Comment on the Labour Code, 8th ed., Sofia, 2005, pp. 874-879

where the court has upheld the claim and has revoked the wrongful dismissal, the existence of the employment relationship is resumed, however, it does not function because the employee has not sought to be reinstated in the job. The situation in the second hypothesis (item "b") is a similar one, however it concerns only those cases in which the court has upheld the claim for the reinstatement in the previous job, and, after being notified of the court decision for his/her reinstatement in the previous job, the employee has failed to appear in order to take the job within the 14 days' term specified in law (Art. 345, para. 1 LC). Here again, in spite of its being resumed, the employment relationship does not function. Art. 325, item 2 of the LC provides for termination of the labour contract *ex lege* in both hypotheses as the relationship does not function.

In practice, these grounds are used as a legal "way out" for terminating an employment relationship which has not been terminated juridically, although it does not function because of the employee's will. The formal termination of the relationship on the said grounds gives clarity and explicitness to the relationships of the parties.

54. **Termination of Labour Contracts of Definite Duration (Art. 325, items 3-5 LC)**

The operative legislation provides for specific grounds for the termination of the various types of labour contracts of definite duration:

a) for a fixed period – by expiry of the term agreed in the labour contract (Art. 325, item 3 LC);

b) for the performance of certain work – by completing the work specified in the labour contract (Art. 325, item 4 LC);

c) for substitution for an absent employee. The substitute's labour contract of definite duration is terminated upon the return of the regular holder of the position (Art. 325, item 5 LC).

55. *Termination of the employment relationship for a job provided for a pregnant woman or a person with reduced capacity for work reassigned to a suitable job* (Art. 325, item 6 LC).

According to Art. 315 LC, the employers are obliged to allot easy-job positions amounting to 4 to 10 percent of all positions in the enterprise for being held by pregnant women or persons with reduced capacity for work reassigned to a suitable job. Where no pregnant women or persons with reduced capacity for work apply for these positions, they are occupied by other healthy employees and women who are not pregnant. However, where later on it turns out that there are persons with reduced capacity for work or pregnant women-employees, they are reassigned to these jobs, while those employees who have been holding these jobs without having the said quality have their employment relationships terminated under Art. 325, item 6 LC.

56. *Entering a job on the part of an employee who has been selected or has won a contest* (Art. 325, item 8 LC).

The employment relationship of the employee which used to exist until that time under a labour contract is terminated in order for him/her to be easier to take the new position following the election or the contest, this new position usually being better paid and preferred by him/her, in any event.

57. *Illness or medical contraindications* (Art. 325, para. 9 LC).

In these cases the employment relationship of the employee is terminated if the following prerequisites are present: a) the employee suffers from a disease which has brought about disability. According to Bulgarian law, "disability" denotes permanent incapacity for work of 50 percent or more; b) presence of medical contraindications. These are the cases in which the working environment contains certain conditions to which the employee is allergic – chemicals, evaporations and the like, which are harmful for the health, although they have not yet brought about incapacity for work; c) impossibility for the employee to perform the tasks assigned to him/her because of the circumstances mentioned above (see items "a" and "b" above); d) the conclusion of the territorial expert medical commission, which, being the competent medical body, has established the presence of a disease resulting in disability or medical contraindications; e) the employee refuses to take the job which is offered to him/her and is suitable for his/her state of health.

58. *Death of the employer under a labour contract "intiuitu personae" concluded with him/her* (Art. 325, item 10 LC).

In practice, these are rare cases in which the employee has concluded a labour contract with the employer in view of the personal needs of the latter: as a private secretary, a personal driver, a household helpmate, a gardener, etc. The death of the employer puts an end to this labour contract, as the need for performing the respective labour function ceases to exist, this labour function being the one for which the labour contract was concluded.

59. *Death of the employee* (Art. 325, item 11 LC).

The grounds for the termination of the employment relationship consist in the fact that the employee does not exist physically any more, and owing thereto, the employment relationship is terminated.

60. *Determining the position for being taken by a civil servant* (Art. 325, item 12 LC).

These cases occurred after 27 August 1999 when the Civil Servant Law took effect (prom. OJ, No. 67 of 1999). By virtue of this Law, a number of positions and functions, primarily in State institutions (Ministries, other administrative institutions, regional and municipal administrations), which until that time used to be held by employees under employment relationships, were announced for being held by civil servants under civil service relationships. This necessitated the termination of these employment relationships and their "replacement" by civil service relationships. Of course, in those cases where the employees holding the said positions under an employment relationship met the requirements for civil servants, they were appointed as civil servants, if they wished so. However, even in these cases, their employment relationship had to be terminated in order for the civil service relationship to be established.

(2) Preliminary Procedures

61. There are no preliminary procedures, except for the termination of the labour contract in the case of illness or medical contraindications (see No. 57 above).

(3) Consequences of the Existence of the Respective Grounds

62. If one of the above-mentioned grounds exists, the labour contract is terminated.

According to Art. 222, para. 2 LC indemnities are paid in the case of termination of the labour contract in the case of illness or medical contraindications (see No. 57 above).

(4) Ways of Contestation of the Termination of Labour Contracts

63. The worker is entitled to lodge a claim before the court against the termination of labour contract if he considers it illegal, wrongful or invalid within the framework of the legal defence against wrongful dismissal (Art. 344, para. 1 LC).

(5) Sanctions

64. There are no special sanctions.

(6) Collective Labour Contracts

65. Their role in this matter is very limited, except for the indemnities in case of termination of labour contract upon illness or medical contraindication.

3.3. DISMISSAL OF THE EMPLOYEE

GENERAL VIEW

66. According to the operative Bulgarian labour law, dismissal is the termination of the labour contract by way of the employer's unilateral expression of will. This form of termination of the labour contract is characterized by several common features.

a) Its legal regulation is based on the law. It is built up on the principle of lawfulness of the grounds for dismissal. This means that the said grounds are explicitly provided for in law and are exhaustively enumerated in its imperative provisions. This principle was introduced in the Labour Code in the year 1951 (Arts. 31 and 33).[9] It was also adopted in the operative Labour Code of the year 1986.[10] The main objective was the provision of strong legal defence against arbitrary dismissals of employees on the part of the employer. The "law" providing for the grounds of dismissal is primarily the Labour Code – Art. 328 and Art. 330 LC. No other grounds for dismissal may be provided for in sublegal normative acts, in collective or in individual labour contracts.

[9] **L. Radoilski**, Labour Law, op.cit., pp. 557-565, 571-574

[10] **K. Milovanov**, Labour Contract, Sofia, 1993, pp. 119-169; **V. Mrachkov**, Labour Law, op. cit., pp. 564-568

A dismissal which has been accomplished on any grounds other than the ones specified in law is wrongful;

b) The dismissal is accomplished by way of a written “order for dismissal” issued by the employer. “Oral” dismissal is void;

c) As a form of termination of labour contracts, dismissal is applied to the contracts of both definite and indefinite duration. However, there exist specific grounds for the termination of the contracts of definite duration (see No. 54 above);

d) Preliminary protection in dismissal (Art. 333 LC) has been laid down for certain exhaustively enumerated grounds and categories of workers. It will be studied later on (see Nos. 100-105 below);

e) Following the profound changes in our country since the end of the year 1989, the legal regulation of dismissal has undergone serious changes (1992, 2001, 2002, 2003, 2004 and 2005). Preserving the principle of lawfulness of the grounds for dismissal (see item “a” above), changes were introduced in the regime of dismissal in two different directions. On the one hand, new grounds for dismissal were introduced, which are more general and more flexible in their formulation, these grounds expressing the striving of the lawmaker for covering more cases which entitle the employer to dismiss the employee. Thus, the total number of the grounds for dismissal with or without giving a notice increased from 16 at the end of the year 1989 to 25 in the year 2005. This extended the employer’s right to dismissal and introduced certain liberalization in the regime of dismissals. On the other hand, the social protection in dismissal of certain vulnerable categories of employees has increased under the influence of the international standards and the Directives of the European Union, the figure of “collective dismissals” was introduced, as well as the procedures of information and consultation between the employer and the representatives of employees in the course of dismissals (see Nos. 124-129 below).

f) The grounds for dismissal laid down in Art. 328 and 330 LC are separate juridical facts occurring after the employment relationship has arisen, these facts necessitating or justifying the termination of the relationship. They form a valid reason for the termination of the relationship. Their quality of a “valid reason” is recognized by law and is included in its regulation. These reasons are in line with the main idea of Art. 4 of the ILO Convention No. 158 and Art. 24, item “a” of the European Social Charter regarding the dismissal in the presence of a “valid reason” only, the latter being grounds justifying the dismissal. However, while the quoted international acts express the said grounds in a general and flexible way, the Bulgarian lawmaker, proceeding from his concept of lawfulness of the grounds for dismissal, specifies the generalization of “valid reason” into dozens of separate grounds, and explicitly and exhaustively formulates them in the detailed “catalogues” of Art. 328 and Art. 330 LC.

3.3.1. DISMISSALS CONTRARY TO SOME SPECIFIC RIGHTS OR PUBLIC LIBERTIES

67. The dismissals accomplished in violation of certain specific rights of the employees are wrongful ones. Such are the dismissals:

- for reasons of nationality, origin, sex, sexual orientation, race, age, political and religious beliefs, marital and financial status, mental and physical impairments (Art. 8, para. 3 LC);

- of pregnant women employees and those on maternity leave (Art. 8, para. 3 LC);

- of employees during a strike, the dismissal being aimed at preventing, or impeding, or suspending a strike (Art. 20 of the Law on Settling Collective Labour Disputes);

- of employees who are municipal councillors, for economic reasons (Art. 35 of the Law on Local Self-Government and Local Administration).

68. In another group of cases the employees may be dismissed with a notice or for disciplinary reasons only after the employer has received permission from the Labour Inspectorate or the respective trade union body (Art. 333 LC). These employees are:

- trade union activists;
- employees' representatives;
- mothers of children younger than 3 years of age;
- employees with reduced capacity for work.

69. If appealed against by the employees, the dismissals accomplished in the specified cases (see Nos. 67 and 68 above) are recognized as wrongful and are revoked, and the employees are reinstated in the previous job (Art. 344, para. 1 LC).

3.3.2. DISMISSAL WITHOUT A NOTICE: DISCIPLINARY DISMISSAL

General Remarks

70. The dismissal without a notice is also regulated on the basis of the principle of lawfulness of the grounds for dismissal. These grounds are provided for in Art. 330 LC.

71. In the recent years the grounds for dismissal without a notice have shown a tendency to an increase. In 2003 and 2005 new grounds for dismissal were laid down (the addition to Art. 330, para. 1, item 3 and the new items 7 and 8 in Art. 330, para. 1 LC).

72. What is common to the grounds for dismissal without a notice is that they all relate to the personal conduct of the employee. However, within this common feature of theirs, the grounds for dismissal without a notice differ by their content. In principle, they envisage the employee's culpable conduct. There are exceptions to this rule (Art. 330, para. 2, item 8 LC – see No. 27 above). In general, they can be divided in two groups: disciplinary dismissal and the remainder of grounds for dismissal without a notice.

Disciplinary dismissal

73. Disciplinary dismissal has dual legal importance in the operative Bulgarian labour law, both as the most severe disciplinary punishment (Art. 188, item 3 LC) and as grounds for termination of the labour contract (Art. 330, para. 1, item 6 LC). The

second meaning of disciplinary dismissal constitutes the subject matter of the analysis below.

(1) Substantive Conditions

74. Disciplinary dismissal is accomplished for serious disciplinary violations committed by the employee. These are culpable violations of the employee's official duties which constitute gross non-performance of important official duties of the employee and considerably injure the interests of the employer. These violations are enumerated in Art. 190, para. 1 LC. Such violations are: three late arrivals or early leaves from work within 1 calendar month, each of them being not shorter than 1 hour, absence from work without 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 citizens on the part of trade and services employees by way of a deceit in the price or quality of the goods or services; or other serious violations.

75. The seriousness of the violation in each specific case of disciplinary dismissal is assessed by the employer. His/Her assessment is subject to judicial control (d. 387-98-III c.d., d. 173-2000-III c.d., etc.).

(2) Preliminary Procedures

76. The disciplinary dismissal is accomplished in accordance with a specific procedure fixed in law. It comprises the following main points:

a) Prior to imposing the disciplinary dismissal, the employer is obliged either to hear out the defaulting employee or to seek written explanations from him/her regarding the disciplinary violation. This obligation of the employer is a specific manifestation of the citizens' constitutional right to legal defence (Art. 56 of the Constitution). Its non-performance turns the disciplinary dismissal into a wrongful one only on these very grounds (Art. 193, paras. 1 and 2 LC);

b) The disciplinary dismissal is accomplished by the employer after he/she has entirely examined all the collected data regarding the violation and has assessed the latter as a "serious" one (see No. 75 above);

c) The disciplinary dismissal is imposed within a 2 months' term following the commitment of the violation, and not later than 1 year following the commitment thereof (Art. 194, para. 1 LC);

d) The disciplinary dismissal is imposed by way of the employer's motivated order. It specifies: the name of the defaulting employee, the features of the violation committed, the time it was committed, the disciplinary dismissal imposed as a disciplinary punishment, and the legal text on the grounds of which the dismissal is imposed (Art. 195, para. 1 LC);

e) The order for dismissal is handed to the employee. It is from this time on that the order produces effect, i.e. the termination of the labour contract takes place.

77. A disciplinary dismissal which does not meet the above requirements is a wrongful one (d. 1240-03-III c.d., d. 1433-03-III c.d., d. 591-04-III c.d., d. 713-04-III c.d., etc.).[11]

78. If the defaulting worker belongs to the categories of workers who are preliminarily protected in dismissal (see Nos. 100-105 below) the employer is obliged to demand and to receive the authorization from the competent body (regional inspection of labour or the relevant trade union body) allowing him to dismiss the respective worker.

(3) Consequences of the Dismissal

79. The main consequence of the disciplinary dismissal is the termination of the labour contract.

(4) Ways of Contestation

80. The worker is entitled to lodge a claim before the court against the disciplinary dismissal if he considers it wrongful within the framework of the legal defence against wrongful dismissal.

(5) Suspension of the Consequences of the Dismissal

81. The suspension of the consequences of the disciplinary dismissal is inadmissible by Bulgarian legislation.

(6) Reintegration

82. The reintegration is not only admissible but also mandatory if the worker has demanded it. It is provided for in Art. 344, para. 1, item 2 LC.

(7) Sanctions

83. No special sanctions have been provided in law.

(8) Collective Labour Contracts

84. As the disciplinary dismissal is regulated by imperative legal provisions, the collective labour contracts do not contain clauses regarding it, except for the amount of indemnity in the case of wrongful dismissal.

OTHER GROUNDS FOR DISMISSAL WITHOUT A NOTICE

85. *Detention of the employee for the execution of a sentence* (Art. 330, para. 1 LC).

[11] **V. Mrachkov**, Review-03, "Juridical World" Journal, 2004, No. 2, pp. 199-200; Review-04, "Juridical World" Journal, 2005, No. 2, pp. 141-143

It is applied in the performance of a sentence that has taken effect, this being a sentence imposing the punishment of imprisonment with an effective execution of the sentence. In this case the dismissal is conditioned by the fact that while the employee is serving the punishment of imprisonment in jail he/she is unable to perform his/her duties under the labour contract. The crime for which he/she was sentenced is of no importance, neither is of any importance the length of the punishment imposed on him/her. It is in the discretion of the employer to decide whether, in the event of detention of the employee for serving the punishment of imprisonment, the latter will be dismissed under Art. 330, para. 1 LC without a notice, or the employment relationship with him/her will be preserved as though he/she were on an unpaid leave, and, once the employee has served the punishment, he/she will come back to work. In practice, these cases are not rare, especially in sentencing for contraventions of negligence, where the sentence of imprisonment is a short-term one.

86. *Depriving the employee of the right to hold the position he/she has been appointed to* (Art. 330, para. 2, items 1 and 3 LC).

According to the operative legislation, the above may occur in the event that: a) an employee whose sentence has taken effect under Art. 37, para. 1, items 6 and 7 of the Penal Code is imposed a prohibition either on exercising his/her profession or on holding the position he/she has been appointed to; b) an employee who has a penalty warrant imposing an administrative punishment of "deprivation of the right to exercise a certain profession" – for instance, a driver of a motor vehicle who has been punished for an administrative violation committed by him/her – drunken driving and the like; c) under the Law on Professional Organizations of Doctors and Dentists and the Law on the Professional Organization of Nurses and Associate Medical Specialists (midwives, laboratory assistants, etc.), a doctor, a dentist, or a health care professional has been struck off the registers of the professional organizations of doctors, dentists, and health care professionals because of the commitment of serious violations of their official duties and professional ethics.

87. *Depriving of the scientific title or scientific degree* (Art. 330, para. 2, item 2 LC).

These grounds apply only to those lecturers in higher education institutions and the research associates in the Bulgarian Academy of Sciences who work under employment relationships. In order for a person to occupy a scientific position in these institutions, it is necessary that he/she should have the respective scientific titles (professors, associate professors, assistant professors) and the respective scientific degree (Doctors, Doctors Scientiarum). These scientific titles and degrees are conferred in accordance with a procedure laid down in the Law on Scientific Titles and Scientific Degrees. The Law also sets forth the procedure for depriving a person of his/her scientific titles or scientific degrees where it has been established that they have been acquired in serious violations of the law – plagiarism, forged documents, or another deceit. When a person is deprived of them, he/she is dismissed under Art. 330, para. 2, item 2 LC from the scientific position he/she has been holding, without a notice. In practice these grounds are applied very rarely.

88. *Refusal of a person with reduced capacity for work to accept the suitable job he/she has been reassigned to* (Art. 330, para. 2, item 5 LC).

These grounds have two basic elements: a) the employee should be a person with reduced capacity for work who has been reassigned to a suitable job, i.e. because of his/her impaired state of health, on the prescription of the health bodies under Arts. 314 and 317 LC, he/she should be transferred to another job, which is suitable for his/her state of health; b) the person should have refused to take the suitable job proposed to him/her. In this situation the employer may no longer have him/her do the job he/she has been doing until that time, because the health bodies find that the said job is harmful to him/her, while he/she is not willing to accept the job which is suitable for his/her state of health. The way out of the situation thus created is the dismissal of the respective employee under Art. 330, para. 2, item 5 LC, without a notice.

3.3.3. DISMISSAL WITH A NOTICE FOR REASONS CONNECTED WITH THE EMPLOYEE'S PERSONALITY

General Matters Relating to Notice

89. The dismissal with a notice is regulated in Arts. 328 and 329 LC. It poses three groups of questions: those of the notice, the separate grounds on which the dismissal is accomplished, and the selection in certain grounds for dismissal.

90. The notice for the accomplishment of dismissal in these cases is provided for in Art. 328, para. 1 LC. The notice is aimed at having the dismissal accomplished more smoothly and the employee prepared for the forthcoming termination of the labour contract.

a) The first question relates to the term of the notice, i.e. the duration thereof. The Labour Code lays down different terms depending on whether the notice of dismissal is given under a labour contract of definite or indefinite duration (Art. 328, para. 1, in relation to Art. 326, para. 2 LC).

In the event of a dismissal under a labour contract of indefinite duration the minimum term of the notice is 30 calendar days. The parties may agree a longer term of the notice, however, the said term may not exceed 3 months.

In the event of a dismissal of an employee under a labour contract of definite duration the term of the notice is 3 months;

b) The notice may be withdrawn, if the employer communicates it to the employee prior to or upon the receipt thereof. The notice may as well be withdrawn later – prior to the time it expires, however, this may be done only with the consent of the employee (argument under Art. 326, para. 4 LC);

c) Prior to the time the notice expires, the employment relationship between the parties exists in its full value – with all the rights and obligations of the parties thereto. However, the employer is entitled to terminate the labour contract prior to the expiry of the term of the notice, and in this case the employer owes to the employee compensation in the amount of the employee's gross labour remuneration for the unobserved term of the notice (Art. 220, para. 1 LC). The employee who has been notified of a dismissal under Art. 328 LC may as well terminate the labour contract prior to the expiry of the term of the notice in the event that he/she has found another

suitable job. In this case he/she owes to the employer a compensation amounting to his/her own gross labour remuneration for the unexpired term of the notice (Art. 220, para. 2 LC).

GROUNDS FOR DISMISSAL WITH A NOTICE

91. The grounds for a dismissal with a notice are laid down in Art. 328 LC. They differ from each other by the corpus thereof. What they have in common is that they are objective grounds for dismissal, i.e. they are not connected with culpable conduct on the part of the employee. And this has been the main consideration for the lawmaker to provide that the dismissal in these cases is accomplished with a notice (see No. 90, item “a” above).

Depending on which legal sphere the respective grounds for dismissal belong to, the grounds can be divided into two groups: a) grounds connected with the personality of the employee; b) economic ones – the reason which brings about the dismissal is connected with the activity of the employer and the management of the enterprise. Here is their content in brief.

Dismissal for reasons connected with the employee’s personality

(1) Substantive Conditions

92. *Lack of qualities for the performance of the assigned work* (Art. 328, para. 1, item 5 LC).

The elements of these grounds are as follows:

a) lack of the required professional qualities: skills, perceptivity, dexterity and other intellectual and physical capacities. The lack of these qualities should be objective, and not culpable, and should also reflect the permanent state of the employee’s capacities;

b) the lack of the required qualities should negatively affect the performance of the assigned work on the part of the employee (d. 1164-01-III c.d., d. 623-03-III c.d., etc.).

93. *Lack of the required education* (Art. 328, para. 1, item 6 LC).

This means an absence of education of the required degree and type – secondary general education, secondary specialized education (technical, economic, medical, etc.), higher education of a specific type (civil engineering, architecture, medical education, etc.). The requirements regarding the respective type and degree of education are specified in the laws and the sublegal normative acts, as well as by the employer, depending on the nature of the work performed. Where the required education is specified by the employer, he/she is free to change it at any time until the employment relationship is effective.

94. *Lack of the required professional qualification* (Art. 328, para. 1, item 6 LC).

It is specified by the employer, depending on the nature of the work performed, and may be changed by the employer at any time until the employment relationship is

effective, depending on the needs of the enterprise. Such requirements are: specific type and length of service in the speciality, etc.

95. *Reinstatement of a wrongfully dismissed employee* (Art. 328, para. 1, item 8 LC).

These grounds consist of three elements: a) reinstatement of the wrongfully dismissed employee to the previous job which he/she has performed prior to the dismissal; b) appearance of the wrongfully dismissed employee for taking the job to which he/she has been reinstated; c) the job from which the employee has been wrongfully dismissed has to have been taken by another employee. The first and the third prerequisites of these are within the employer's legal sphere, while the second one is within the legal sphere of the dismissed employee.

96. *Early discharge from compulsory military service* (Art. 328, para. 1, item 9 LC).

These grounds apply to those cases in which a person who has been an employee serves his compulsory military service and has had a pre-term discharge, regardless of the reasons for this discharge. The person is entitled to take again the job which he has been holding prior to going to the barracks for doing his compulsory military service. And the employee who was appointed into his place is dismissed in order for the employee who has had a pre-term discharge from compulsory military service to take his previous job again.

97. *Acquisition of a right to pension* (Art. 328, para. 1, item 10 LC).

It consists in the occurrence of a right to pension for insurance length of service and age: on reaching a certain age (in the year 2006 this age is 63 for men and 58 and 6 months for women) and a certain number of "points" (in the year 2006 - the sum of the years of age and the years of the insurance length of service: 100 for men and 92 for women). If these two prerequisites are available, the employer is entitled to discharge the employee with a notice, however, he/she is not obliged to do so.

98. *Change in the requirements regarding the performance of work* (Art. 328, para. 1, item 11 LC).

These grounds consist of two elements that have to be present cumulatively: a) a change in the requirements for holding the position has been made, such as: longer length of service, etc.; b) the employee does not meet the changed requirements.

99. *Objective impossibility to perform one's labour contract* (Art. 328, para. 1, item 12 LC).

It might be due to various reasons, for instance: sentencing the employee for a crime which does not allow him/her to perform his/her labour functions because of the prohibition imposed by the sentence; refusal on the part of the bodies of the Ministry of the Interior to give permission for carrying a weapon to a person of the armed guards, etc.).

(2) Preliminary Procedures

100. The employer is obliged to observe the preliminary protection in dismissal for the following grounds: lack of the qualities required for the performance of the assigned work and change in the requirements regarding the performance of work on the part of the employer, and disciplinary dismissal (Art. 333, paras. 1 and 3 LC).

101. In view of the personality of the employees, the preliminary protection in dismissal applies only to those categories thereof which are in a vulnerable or specific position: a) pregnant women and mothers of children younger than 3 years of age, and women whose husbands are serving their compulsory military service; b) employees with reduced capacity for work who have been reassigned to a suitable job, and disabled persons; c) employees suffering from certain diseases. The latter are specified in Ordinance No. 5 of the Minister of Health Care of the year 1987 and comprise: the ischemic heart disease, mental disease, diabetes, oncological diseases, tuberculosis and occupational diseases; d) employees who are on their granted leave of absence; e) trade union activists.

102. The preliminary permission for dismissal of an employee (see No. 101 above) is given by the regional labour inspectorate by the region of the enterprise in which the employee works, and for the trade union activists – by the superior trade union body, the latter being determined by the central management of the respective trade union organization.

103. The preliminary protection in dismissal has to be performed prior to handing the order for dismissal (Art. 333, para. 7 LC). It is until that time that the preliminary permission or consent has to be obtained.

104. A dismissal accomplished without preliminary permission or consent, as well as a dismissal accomplished with preliminary permission or consent given after the order for dismissal was handed, are wrongful ones. In challenging such a dismissal before the general court, the latter overrules it on these very grounds, without considering the merits of the case (Art. 344, para. 3 LC).

105. After having received the prior permission or consent for the dismissal, the employer hands the written order for dismissal to the worker.

(3) Consequences of Dismissal

106. The labour contract is terminated upon the expiry of the last day of the term of notice. In the case of non-observance of the expiry of the term of notice under Art. 220 LC, the employment relationship is terminated upon the handing of the order for dismissal and the payment of indemnity for non-observance of the term of notice.

(4) Ways of Contestation

107. The worker is entitled to lodge a claim before the court against the dismissal if he considers it wrongful within the framework of the legal defence against wrongful dismissal.

(5) Suspension of the Consequences of the Dismissal

108. The suspension of the consequences of the dismissal is inadmissible by Bulgarian legislation.

(6) Reintegration

109. The reintegration is not only admissible but also mandatory if the worker has demanded it (Art. 344, para. 1, item 2 LC).

(7) Sanctions

110. No special sanctions have been provided in law.

(8) Collective Labour Contracts

111. As this form of dismissal with a notice has been regulated by imperative legal provisions, the collective labour contracts do not contain clauses regarding it, except for the amount of indemnity in the case of wrongful dismissal.

3.3.4. DISMISSAL ON ECONOMIC GROUNDS WITH A NOTICE

(1) Substantive Conditions

112. *Close of a part of the enterprise* (Art. 328, para. 1, hypothesis 1 LC)

"Close of a part of the enterprise" denotes the suspension of the activity of a separate unit of the enterprise – a production workshop, a laboratory, a department, an office and the like. The reasons that have necessitated the close thereof are of no importance (d. 952-01-III c.d., d. 2219-04-III c.d., etc.).[12]

113. *Staff reduction* (Art. 328, para. 1, item 2, hypothesis 2 LC).

Staff reduction denotes the future decrease or elimination of a certain number of the total number of employees. The reasons for it might be different: the need for the respective labour function ceases to exist, or rationalization of work, or introduction of new technology or the like (d. 936-03-III c.d., d. 381-04-III c.d., etc.).

114. *Decrease in the amount of work* (Art. 328, para. 1, item 3 LC).

This means a decrease in the production programme, the quantities of manufactured products and the like, in accordance with which the number of the production staff has to be decreased as well. It might be due to various reasons: shortage of raw materials, lower demand for the products and smaller sales on the market, etc. (d. 1110-02-III c.d., d. 1548-04-III c.d., etc.).

[12] **V. Mrachkov**, Labour Law, op. cit., pp. 571-572; **V. Mrachkov, K. Sredkova, A. Vassilev**, Comment on the Labour Code, 8th ed., Sofia, 2005, pp. 832-834

115. *Suspension of work for more than 15 working days* (Art. 328, para. 1, item 4 LC)

"Suspension of work" denotes temporary discontinuance of the activity of the enterprise. It might refer either to the activity of the whole enterprise, or separate parts thereof - a production workshop, a department, an office, etc. It does not matter what the reasons for it are – shortage of materials, break-down or repair of machinery, etc. It is only necessary that the suspension of work actually lasts for more than 15 working days, which indicates a comparatively long inactivity of the enterprise or a part thereof. In these cases the dismissal is targeted at the employees engaged in the activities of the enterprise or those units of its the activity of which has been suspended (d. 523-01-III c.d., d. 1927-04-III c.d., etc.).

116. *Changing the place of the enterprise* (Art. 328, para. 1, item 7 LC).

These grounds consist of two elements: a) the enterprise is moved to another population centre (a town or a village) or locality which is different from the population centre or locality in which it has performed its activity until that time. The change of the place of the enterprise might concern either the activity of the enterprise as a whole, or the activity of separate units of its – a production workshop, a department, an office, etc. This element of the corpus of grounds for dismissal is determined at the discretion of the employer; b) refusal of the employee to go to the new place of the enterprise or the respective part thereof. This relates to changes in the life of the employee and his/her family, and owing thereto, he/she is entitled to refuse on general grounds. This element of the corpus of the grounds for dismissal lies within the sphere of the employee.

117. *A concluded management contract* (Art. 328, para. 2 LC).

This contract is concluded for the management of public and private commercial companies and enterprises for a term of up to 3 years. It specifies the business task of the Manager as well as his/her remuneration for managing the enterprise. This contract is a personal one. The legal doctrine defines it as a particular type of mandate contract.[13] By virtue of the concluded contract, the Manager acquires the quality of a representative of the employer. The law also grants him/her 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 for performing the management contract together with them. Such collaborators are: the heads of the production workshops, as well as those of the production units, departments, offices, etc. The employer is entitled to exercise this right of his/hers within 9 months following the commencement date of the management contract (d. 133-02-III c.d., d. 607-03-III c.d., d. 415-04-III c.d.).

(2) Preliminary Procedures

118. The employee's dismissal with a notice on certain economic grounds (see Nos. 112-114 above) is accompanied by "the right to selection" the employer is provided with. It is regulated in Art. 329 LC.

[13] **V. Tadjer**, Contract for the Management of a Sole Proprietor Commercial Company with Exclusive State Equity, "Contemporary Law" Journal, 1992, No. 4, pp. 14-21

The right to selection is applied only where the dismissal is accomplished on one of the following three grounds, specified in Art. 329, para. 1 LC: close of a part of the enterprise, staff reduction or decrease in the amount of work (see Nos. 112-114 above). It is not applied to dismissal with a notice on any of the other grounds under Art. 328 LC, and the employer has the right to dismiss an employee only where there exist the respective legal grounds for his/her dismissal.

119. The right to selection is the employer's subjective reformative right and a continuation of his/her right to dismissal. In principle, the employer is entitled to exercise it if and where he/she finds it appropriate, provided that any of the specified three grounds are present (see No. 118 above). And yet, here it is necessary to make certain clarifications and modalities which were introduced by the jurisprudence and the legal doctrine in the exercise of this right.

Where a dismissal is accomplished because of staff reduction eliminating the only position of a certain type – for instance, the only position of a paymaster of an enterprise – in his/her sole discretion, the employer is entitled either to dismiss the respective employee who holds it, or to make a selection in accordance with the criteria and objectives of making the selection, these criteria and objectives having been laid down in law (see Nos. 120-122 below). If the employer decides not to make a selection, he/she is entitled to dismiss the employee holding the position, and the latter may not challenge the lawfulness of the decision as being a wrongful one because of the fact that the employer has not exercised his/her right to selection and has not dismissed someone else instead, e.g. the purser of the enterprise, who fails to perform well his/her official duties. The same applies to the grounds of "close of a part of an enterprise" (see No. 112 above). In this case, again, the employer is entitled to dismiss those employees who are engaged in the closed unit of the enterprise (a production workshop, a department, an office) without exercising his/her right to selection. However, if the employer decides to exercise his/her right to selection, he/she may dismiss another employee or other employees performing similar work functions, and not the one or the ones concerned by the position which is made redundant or the closed unit of the enterprise.

Yet, there are cases in which the employer inevitably exercises his/her right to selection. This refers to certain hypotheses on the grounds of "staff reduction" and "decrease in the amount of work". Where the staff reduction concerns one or more of the multitudinous similar positions in the enterprise – for instance, one of the two positions of paymasters of the enterprise is made redundant, or 5 of the 16 positions of cinema operators in a film studio, etc., it is inevitable for the employer to choose among all the employees holding the same positions in order to decide who should be dismissed. This solution will also apply to the grounds of "decrease in the amount of work" because the employer has to choose among all employees those who will have to be dismissed due to the occurring decrease in the production programme of the enterprise. In these hypotheses the right to dismissal cannot be exercised without making a selection. This right of the employer implicitly contains the right to selection, although the two rights are different. The jurisprudence and the legal

doctrine are unanimous regarding this matter (d. 778-01-III c.d., d. 134-02-III c.d., d. 1142-03-III c.d., d. 1036-04-III c.d., etc.).[14]

120. The essence of the employer's right to selection consists in the possibility he/she is provided in law not to dismiss those employees which are engaged in the closed part of the enterprise or 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. This possibility provides the employer with greater freedom of action and flexibility in exercising the right to dismissal. The law determines the scope of employees among which the selection is made. These are "the employees whose positions are not made redundant". At first sight a conclusion can be drawn that these are all the remaining employees of the enterprise. However, that is not true. Actually, these are the employees whose positions and labour functions are close or similar to those which are closed or made redundant. This limitation is conducted consistently in the jurisprudence (d. 989-99-III c.d., d. 1919-02-III c.d., d. 1260-03-III c.d., etc.).

121. The law also lays down those criteria through which the selection takes place, as well as the objectives for the achievement of which it is made.

There are two criteria: the qualification and the level of performance of the assigned work. "The qualification" denotes the professional qualification – education, knowledge, skills and dexterity in accordance with the requirements for the respective position, regardless to whether they are certified through having completed a higher level and type of education or not. The qualification is established through documents of completed education, postgraduate training, courses taken for improving the professional qualification, etc. With reference thereto, the Supreme Court of Cassation notes as follows: "What qualification means is not only the level of education, but also the whole picture of professional qualities and skills required for holding the position" (d. 810-92-III c.d.). And the level of performance of the assigned work comprises the timely, complete, quantitative and high-quality performance of the assigned tasks. The level of performance is measured by the results of doing the assigned work. The two criteria are applied and assessed cumulatively. Thus, impartiality, transparency and fairness are introduced in making the selection.

The objectives of the selection consist in the protection of "the interests of the production and the office". This means that the selection has to be made in a way which provides that, in the course of dismissal accompanied by a selection, the employees who work better and have higher professional qualification keep their job, while those who do not work so well and whose qualification is lower are dismissed (d. 871-91-III c.d.).

122. The exercise of the right to selection under Art. 329 LC is subject to judicial control. The criteria for making the selection, these criteria being specified in law, are of objective nature, and the observance thereof forms an implicit part of the employer's right to dismissal on the said three grounds. Where a dismissal is accomplished in the presence of these grounds, but the rules on making the selection

[14] **V. Mrachkov,** Review-01, "Juridical World" Journal, 2002, No. 2, pp. 203-204; Review-02, "Juridical World" Journal, 2003, No. 2, pp. 144-146; Review-04, "Juridical World" Journal, 2005, No. 2, pp. 140-141

have not been observed, the dismissal is wrongful on general grounds, with all the consequences arising from its wrongfulness. In its practice, the Supreme Court of Cassation firmly adheres to this view (d. 546-99-III c.d., d. 1639-01-III c.d., d. 1997-04-III c.d., etc.).[15]

123. In the cases of dismissal on the close of part of an enterprise, staff reduction and decrease in the amount of work the worker enjoys the same preliminary protection in dismissal as in the dismissal for reasons connected with the employee's personality (see Nos. 100-105 above).

(3) Specific Procedures for Collective Dismissals

124. The legal regulation of collective dismissals is a new phenomenon in Bulgarian labour law. This regulation was started in the year 1997 through Arts. 64-66 of the Law on Unemployment Legal defence and Employment Promotion (prom. OJ, No. 123 of 1997, am., repealed). The currently operative legal regulation is contained in Art. 130a and § 1, item 9 of the Supplementary Provisions of the Labour Code, and Arts. 24-25 of the Employment Promotion Law (prom. OJ, No. 112 of 2001). As a whole, the requirements of the Convention No. 158 and Recommendation No. 166 of the ILO and Directive 75/129 EEC, Directive 92/56 EEC and the Consolidating Directive 98/59/EEC have been observed.

125. In accordance with the operative legal regulation, the characteristic features of collective dismissals are:

a) The said dismissal applies only to those enterprises and organizations which have 20 or more employees;

b) The dismissal has to be accomplished on specific grounds. These grounds are: closing the activity of the enterprise as a whole or the activity of a part thereof, staff reduction, decrease in the amount of work and suspension of work for more than 15 working days (Art. 328, para. 1, items 1-4 LC). All these are economic grounds for dismissal, which lie within the legal sphere of the employer (see Nos. 112-115 above and No. 142 below).

c) The dismissal has to affect a relatively large number of employees of the enterprise:

- 10 dismissed employees where the total number of employees is 21 to 99;
- 10 percent dismissed employees where the total number of employees is 100 to 300;
- 30 dismissed employees where the total number of employees is over 300;
- the dismissal should be accomplished within 30 calendar days.

126. In the cases of collective dismissals two parallel procedures for preliminary notification necessarily apply: the provision of both information and consultations under Art. 130 of the Labour Code and Arts. 24-25 of the Employment Promotion Law (EPL). These procedures have to be started not later than 45 days prior to the accomplishment of the dismissals.

[15] **V. Mrachkov,** Review-04, "Juridical World" Journal, 2005, No. 2, pp. 140-141

127. The procedure under Art. 130a LC is fulfilled within the enterprise. This procedure consists in the provision of information and conducting consultations and negotiations between the employer and “the representatives of the employees”. “The representatives of the employees” with whom these negotiations are conducted are employees elected by the General Meeting of the employees in accordance with the procedure set forth in Art. 7, para. 2 LC, and representatives of the trade union organizations within the enterprise. The procedure and the way of conducting the consultations is specified in the collective labour contract. In order for these consultations and negotiations to take place, as well as in the course of conducting them, the employer is obliged to provide the representatives of the employees with information on the following matters: a) the total number of employees within the enterprise and their distribution by major economic activities and qualification groups; b) the reasons that have resulted in the collective dismissals; c) the number of employees the employer intends to dismiss, and the distribution thereof by economic activities in which they are engaged; d) criteria on the grounds of which the selection in dismissal will be made. These criteria are determined on the basis of the criteria set forth in Art. 329 LC (see Nos. 118-122 above) and represent a specification thereof in view of the scope of activity and the organization of the production process within the respective enterprise.

128. The meaning and purpose of these negotiations is to achieve prevention or limitation, at least, of the scale of collective dismissals, its deferment in time and attenuation of the consequences by offering possibilities of vocational training and vocational retraining of the employees affected by the collective dismissals. In the course of these negotiations the parties conclude an agreement on the consent they have reached, and they are obliged to abide by it and to carry out the arrangements agreed.

129. The procedure under Arts. 24-25 is performed on a tripartite basis and involves the employer, representatives of the employees and representatives of public authorities – the municipal administration and the territorial division of the National Insurance Institute. The employer submits the information under Art. 130a LC (see No. 127 above) to the representatives of the public authorities. It is on this basis that the tripartite negotiations between the employer, the representatives of the employees and the representatives of the public authorities commence. These negotiations are focused on developing projects and seeking possibilities of providing employment to those employees who will be discharged as a result of the forthcoming collective dismissals, their involvement in various forms of vocational training depending on the needs for workforce in the municipality, the available vacancies in other enterprises and organizations, creating new workplaces on the territory of the municipality, commencement of independent economic activities on the part of the dismissed employees, etc.

(4) Consequences of Dismissal

130. The main consequence is the termination of the labour contract.

131. Another consequence is the payment of some indemnities in the case of dismissal for reason of close of a part of the enterprise, staff reduction, decrease in the amount of work and suspension of work for more than 15 working days (Art. 222, para. 1 LC).

(5) Ways of Contestation

132. They are the same as those for dismissal for reasons connected with the employee's personality (see No. 107 above).

(6) Suspension of the Consequences of the Dismissal

133. See No. 108 above.

(7) Reintegration

134. See No. 109 above.

(8) Sanctions

135. The non-observance of the procedure for information, negotiations and consultations on the part of the employer in collective dismissals under Art. 130a LC and Arts. 24-25 of the EPL constitutes an administrative violation, for which administrative penal responsibility is borne in the form of a fine under Art. 414 LC and Art. 83 of the EPL. In collective dismissals the amount of the fine ranges between BGN 250 and BGN 1,000 per each dismissed employee for whom the procedure of submitting information and conducting negotiations and consultations under Art. 130a LC and Arts. 24-25 of the EPL has not been observed.

(9) Collective Labour Contracts

136. According to Art. 333, para. 4 LC, a collective labour contract may provide for preliminary protection in dismissal for all employees of the enterprise on either of the following grounds: staff reduction or decrease in the amount of work. This legal defence is expressed in the need for having preliminary permission for the dismissal of each employee given by the respective trade union in the enterprise – the trade union council or committee of the enterprise. In view of the current trade union pluralism, and in the presence of a number of trade union organizations in the enterprise, the collective labour contract stipulating the preliminary protection in dismissal under Art. 333, para. 4 of the LC is the one that specifies which the respective trade union body is.

(10) Special Regimes

a) Insolvency

137. The changes that took place in the country during the late 1989 brought about the restoration of private property and the introduction of market economy. They conditioned the adoption of the Commercial Law (1991, 1994, 1996) and the resumption of commercial relations and commercial law, which have been absent for years from the legal system of the country in the conditions of centralized State planned economy.[16] They contain a number of regulations which have their influence upon the development of labour law and employment relationships.

138. Insolvency is among them (Arts. 607-760 CL). It also influences the regulation of the termination of the employment relationship, because usually the indebted trader (either a sole proprietor or a commercial company) is also an employer that has hired employees, through the workforce of which he/she carries out his/her economic activity.

139. Insolvency proceedings are long and complex. It is complex and goes through a number of phases. Its influence upon employment relationships is different and depends on the stage at which the insolvency proceedings are. It is on the grounds of the legal regulation of employment relationships in the Labour Code and the Commercial Law that the legal doctrine and jurisprudence have made two very important distinctions and clarifications.

The first one of them concerns the legal importance of the court decision on insolvency and the opening of insolvency proceedings under Art. 630 CL. Through this decision the debtor is declared insolvent and a temporary trustee is appointed for managing the commercial company. At this stage of the development of insolvency proceedings and in the course thereof the employment relationships of the employees are not terminated, as the activity of the indebted employer that the insolvency proceedings concern continues functioning, and because of it, he/she still needs the employees who perform it. The Supreme Court of Cassation has taken this position as early as the year 1997 and has firmly adhered thereto since that time (d. 183-97-III c.d., d. 729-98-III c.d., d. 135-04-III c.d., etc.).

The second clarification is connected with rendering a court decision under Art. 711, para. 1, item 1 LC on declaring the indebted employer insolvent. Through this decision the court rules as follows: termination of the trader's activity; general attachment and distraint on his/her property; termination of the powers of the debtor as a legal entity; deprivation of the indebted trader of the right to manage and dispose of the debtor's property and encashment of the property. It is only after this decision is rendered that the employer is entitled to terminate the employment relationships with the employees in his/her enterprise. And the grounds for it is provided in Art. 328, para. 1, item 1 LC – close of the enterprise (d. 664-98-III c.d., d. 680-04-III c.d., etc.).[17]

b) Transfer of the enterprise

[16] **O. Gerdjikov**, Comment on the Commercial Law, Book I, Sofia, 1991, pp. 5-29; **P. Goleva**, Commercial Law, Book I, Sofia, 2001, pp. 15-28

[17] **V. Mrachkov**, Review-97, "Juridical World" Journal, 1999, No. 1, p. 265; Review-98, "Juridical World" Journal, 1999, No. 2, pp. 220-221; Review-04, "Juridical World" Journal, 2005, No. 2, p. 130; by the same author: Labour Law, 4th ed., 2004, pp. 570-571

140. According to Art. 123 LC (2004 wording), the employment relationship with the employee is not terminated in the cases of an employer's change resulting from: merger of enterprises, takeover of an enterprise by another one, distribution of the activity of an enterprise among several enterprises, **transfer of the enterprise** or a **separate part of the enterprise** to another one, a change of the owner of either the whole enterprise or a separate part thereof, letting out the whole enterprise or a separate part thereof for rent, lease or concession, as well as in cession or transfer of fixed assets. In the said cases those rights and obligations of the employer-transferor prior to the change which arise from the employment relationships as at the time of the change are transferred to the new employer-acquirer. The liability for the obligations that have arisen prior to the employer's change is borne as follows: in the cases of a merger or takeover or a change in the legal form - by the new employer-acquirer, in all other cases – jointly by the old employer-transferor and the new employer-acquirer.

141. In the cases of an employer's change as specified in Art. 123 LC (see No. 140 above) the transferor and the acquirer are obliged to inform the representatives of the trade union organizations and the representatives of the employees elected by the General Assembly of the employees under Art. 7, para. 2 LC about the following: the forthcoming change and the reason for it; the date the change will take place; the possible legal, economic and social consequences of the change for the employees, as well as the measures foreseen for the employees. The transferor is obliged to submit this information at least 2 months prior to the time his/her employees are directly affected by the change. In those cases where the change is accompanied by measures regarding the employees, both the transferor and the acquirer are obliged to conduct timely consultations as well as to make efforts to reach an agreement with the representatives of the trade unions and the employees under Art. 7, para. 2 LC.

If there are no trade union organizations in the enterprise, and no representatives of the employees have been elected under Art. 7, para. 2 LC, the transferor or the acquirer submits the said information directly to the respective employees.

In the cases of non-performance of the obligation regarding information and consultations, both the employer-transferor and the employer-acquirer bear administrative penal responsibility in the form of a fine under Art. 414 LC.

c) Close of the enterprise (Art. 328, para. 1, item 1 LC)

142. This means total discontinuance of the entire production and official activity of the enterprise, regardless of the reasons that have brought about it. It is often applied under the conditions of restructuring of economy and also where the employer is proclaimed bankrupt and the court suspends his/her activities.[18] In its practice the Supreme Court of Cassation approves the application of these grounds upon rendering a court decision on bankruptcy under Art. 711, para. 1, item 1 of the Commercial Law, this decision suspending the activity of the enterprise (d. 1193-02-III c.d., d. 1047-03-III c.d., etc.).

[18] **V. Tadjer**, Bankruptcy under the Commercial Law, Sofia, 1996, pp. 26-151; **V. Mrachkov**, Labour Law, 4th ed., Sofia, 2004, pp. 569-571

3.4. RESIGNATION OF THE EMPLOYEE

143. The employee is entitled to terminate the labour contract of definite or indefinite duration in two ways: with or without a notice. That is his/her subjective reformative right which reflects the freedom of labour and is a continuation of the freedom in concluding the labour contract.

Termination with a Notice

(1) Substantive Conditions

144. The termination of the labour contract by the employee with a notice is regulated in Art. 326 LC. It is his/her subjective reformative right. It depends on the employee's sole discretion whether to exercise it and when. In exercising it, the employee is not obliged to motivate his/her will. It is sufficient for him/her to express clearly and unconditionally the decision for terminating the labour contract. If he/she wishes so, he/she may also state the motives for this decision. However, the presence of the motives is not a part of the content of the expression of his/her will, neither does the absence thereof vitiate it. This is termination of the labour contract *ad nutum*.

(2) Abandonment of the Job

145. The abandonment of the job is neither admitted nor regulated by law.

(3) Preliminary Procedures

146. The notice of termination of the labour contract by the employee has to be given in writing. The written form is the *ad solemnitatem* form of the employee's unilateral expression of will. An oral notice is ineffective.

147. The term of the notice for labour contracts of definite duration differs from the one for contracts of indefinite duration. The minimum term of the notice for termination of labour contracts of indefinite duration is 30 calendar days. A longer term, not exceeding 3 calendar months, may be stipulated in the individual or collective labour contract. The law fixes the term of the notice for termination of labour contracts of definite duration at 3 calendar months, however, this term may not be longer than the remainder of the term of the contract.

148. The notice that has been given may be withdrawn by the employee not later than the receipt thereof on the part of the employer. From that point of time onwards it may be withdrawn only with the consent of the employer.

(4) Consequences of the Resignation

149. The main consequence thereof is the termination of the labour relation.

150. If the employee does not work during the term of notice, he is obliged to pay an indemnity to the employer at the amount of the gross monthly labour remuneration due to him for the period of the term of notice (Art. 220, para. 1 LC).

(5) Ways of Contestation

151. There are no special ways of contestation.

(6) Compensation Paid to the Employer

152. See No. 150 above.

(7) Simulated Resignations

153. They are not regulated by the Labour Code.

(8) Resignation on Fair Grounds: Resignation without Notice

154. These grounds are exhaustively enumerated in Art. 327, items 1-9 LC. They are the following ones:

a) the impossibility of the employee to perform the work assigned to him/her because of a disease, and the employer not providing him/her with another suitable job in accordance with the prescriptions of the health bodies;

b) employer's delay in paying the labour remuneration or another compensation due to the employee under the employment relationship or social insurance – business trip allowances, compensations for temporary incapacity for work, etc.;

c) unlawful unilateral change in the content of the labour contract: regarding the amount of the basic or extra work remunerations, the duration of the working time, the length of the paid annual leave and the like;

d) considerable deterioration of the labour conditions when the employer changes in the cases of transfer of the enterprise or its restructuring – merger, takeover, distribution of its activity, etc.;

e) the employee's taking a new job of his/her own choice or a scientific job position on the basis of a contest. This new job is preferred by the employee, and the lawmaker makes it easier for him/her to take it immediately;

f) serving one's compulsory military service;

g) continuation of the employee's education through regular studies in an educational institution. It also includes the employee's right to enrol in an educational institution for acquiring either higher degree of education, including PhD studies, or another type and degree of education;

h) the employee's taking a job under a labour contract of indefinite duration after having worked under a substitution labour contract;

i) 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;

j) taking a civil service. The purpose of these grounds is again to facilitate the employee's taking the civil service by providing him/her with the right to terminate his/her labour contract quickly and easily in order to be able to take the civil service.

(9) Collective Labour Contracts

155. There are no clauses in collective labour contracts about the employee's resignation except for the duration of the term of notice.

4. GENERAL QUESTIONS REGARDING ALL FORMS OF TERMINATION OF EMPLOYMENT RELATIONSHIPS

(1) Conventions of Non-Competition

156. There is no special regulation of the conventions of non-competition.

(2) Convention of Non-Suspension of the Labour Contract by the Employee during a Certain Period of Time

157. Such conventions or clauses will be null and void because of their being contrary to Art. 8, para. 4 LC, according to which any renunciation of labour rights shall be considered null and void.

158. In the cases where the employer has paid for the training of the employee, the latter might be obliged to work for a certain period of time but not longer than 6 years (Arts. 229 and 234 LC). Even in these cases the employee may terminate the labour contract by giving a notice and paying the expenses for the training.

(3) Delivery of Reference and Recommendation

159. Upon the termination of the employment relationship, the employee is entitled to demand that the employer issue to him/her: a) an unbiased and fair reference regarding his/her professional qualities; or b) an unbiased and fair recommendation for applying to another employer for a job (Art. 130, para. 4 LC). The employee is entitled to submit these documents when applying to another employer for a job.

(4) Receipt for settlement of the account (Reçu pour solde de tout compte)

160. Such an arrangement does not exist in Bulgarian labour law.

(5) Other General Questions

WRITTEN FORM

161. The termination of the employment relationship is made in a written form. It is explicitly provided for in Art. 335, para. 1 LC for all cases and ways of a

termination of the employment relationship. This means that, regardless of the way in which the employment relationship is terminated, the employer issues a written act evidencing the termination. The said act specifies the legal grounds on which the individual employment relationship with the employee is terminated. The written form is necessary for the validity of the termination. It is the *ad solemnitatem* form of the act. According to Bulgarian law, an oral termination of the employment relationship is ineffective. The written form of termination of the employment relationships gives clarity and security to the future non-existence of the relationship between the parties.

POINT OF TERMINATION OF THE EMPLOYMENT RELATIONSHIP

162. The point from which the employment relationship is regarded as terminated is specified in Art. 335, para. 2 LC. It is differentiated depending on the way in which the termination is performed.

a) in the cases of termination of the employment relationship with a notice, the employment relationship is terminated upon the expiry of the last day of the term of the notice, regardless of the party it comes from – the employee or the employer;

b) in the cases of non-observance of the term of the notice under Art. 220, para. 2 LC, the employment relationship is terminated either upon the expiry of the respective part of the term of the notice, or upon the handing of the order for dismissal or termination of the employment relationship (see No. 53, item “c” above);

c) in the cases of termination of the employment relationship without a notice, regardless of the party it comes from, the employment relationship is terminated upon the receipt of the written expression of will regarding the termination of the employment relationship.

163. The point of termination of the employment relationship is of great juridical importance. The time prior thereto is recognized as length of service and insurance length of service and the employee is owed labour remuneration. It is upon the termination of the employment relationship that a 2 months’ period commences within which the dismissed employee is entitled to challenge the lawfulness of the dismissal before the general court (Art. 358, para. 1, item 2 LC).

DELIVERY OF THE LABOUR RECORD

164. Upon the termination of the employment relationship the employer is obliged to deliver to the employee his/her record of labour immediately, the said record showing the legal grounds on which the employment relationship has been terminated, as well as the length of service and the insurance length of service of the employee (Art. 349, para. 1, items 8 and 9 and Art. 350, para. 1 LC). The retention of the employee’s labour record on the part of the employer is unlawful and the latter owes indemnity to the employee for the damages inflicted in result thereof (Art. 226, Art. 2 LC).

CONCLUDING REMARKS

A. Inferences

165. The effective Bulgarian labour law contains a relatively well developed system of legal regulation of the termination of labour relationships. It is mainly contained in the 1986 Labour Code and its subsequent essential amendments of the years 1992, 2001, 2002, 2003, 2004 and 2005. As a whole, these amendments have proved their appropriateness in practice.

166. The constitutional principle of protection of employee's work forms the foundation of this regulation. The operative regulation is mainly a legal one. The predominant part thereof consists of imperative legal norms understood through substantial jurisprudence. The imperative nature of this State regulation conditions the limited place the collective labour contract and the individual labour contract take in the termination of employment relationships.

167. The basic principle on which the legal regulation of the termination of employment relationships is set up is the principle of having the grounds for terminating the employment relationships laid down in law. This principle is manifested in the explicit and exhaustive enumeration of the general grounds for termination of employment relationships, the grounds for dismissal with or without a notice and the grounds for termination of the labour contract by the employee without a notice. The exception to this principle of termination *ad nutum* of the labour contract with a notice given by the employee is an expression of the employee's work freedom.

168. The existing legal system of termination of the employment relationships provides satisfactory legal defence to the employees. However, the slow pace at which the legal defence against wrongful dismissal is conducted, this taking sometimes 5 years or more, greatly reduces its effectiveness and its quotient of efficiency.

169. The international acts have a favourable impact (Charter of Fundamental Rights of the European Union, the Community Charter of Social Rights of Workers, the European Social Charter, the ILO Convention No. 158 (1982) and the Recommendation No. 166 (1982)). This impact finds its expression in the implementation of their basic resolutions regarding the defence of employees in dismissal: the implementation of the requirement for a valid reason for dismissal on the grounds laid down in law; the preliminary protection in dismissal of vulnerable categories of employees; the regime of collective dismissals; the legal defence in wrongful dismissals, the burden of proof of the lawfulness of dismissal being incumbent on the employer; the compensation and reinstatement of the wrongfully dismissed employee in the previous job.

170. The operative regulation also contains certain shortcomings and deficiencies. They consist in the strict and "closed" nature of the grounds for dismissal; their complexity and their great number, which is inconsistent with the dynamics of the employment relationships in market economy requiring more flexibility and adaptability; the unsuccessful systematization of certain grounds in Arts. 325, 328 and 330 LC; the incompleteness in the preliminary protection against wrongful dismissal which still does not comprise the representatives of the employees

within the scope of persons protected under Art. 7 LC; the underdevelopment of the system of information and consultations with the employees' representatives in the accomplishment of the dismissal; certain technical imperfections of legal nature in the regulation; the notorious tardiness with which the labour justice is administered in the country (see No. 168 above), etc.

B. Tendencies

171. Today's state of the legal regulation of the termination of employment relationships is a result of the evolution it has undergone in the last 15 years. Several main tendencies are outlined in it.

172. *Extensive development*

It consists in the constant increase of the number of grounds for the termination of employment relationships in order for it to cover a greater number of important everyday life situations which require the termination of employment relationships. This tendency is expressed in:

- setting up new general grounds for termination of labour contracts: determining the position which should be held by a civil servant (Art. 325, item 12 LC), mutual consent against compensation (Art. 331 LC), etc. (see Nos. 40-42, 50-51 above);
- setting up new grounds for dismissal with a notice in the cases of valid reasons – decrease of the amount of work (Art. 328, para. 1, item 3 LC), absence of the required education or vocational training of the employee (Art. 328, para. 1, item 6 LC), conclusion of a contract for the management of the enterprise (Art. 328, para. 1 LC), etc. (see Nos. 66, 76 above);
- setting up new grounds for dismissal without a notice – removal from the register of doctors, dentists and health care professionals (Art. 330, para. 1, item 3 LC); non-performance of the obligation of notification in the cases of incompatibility of the work function with other obligations (Art. 330, para. 2, items 7 and 8 LC), etc. (see Nos. 66-88);
- setting up new grounds for the termination of the labour contract on the part of the employee without a notice in the cases of considerable deterioration of labour conditions when the employer changes (Art. 327, item 3a LC); taking a civil service (Art. 327, item 9 LC), etc. (see No. 154 above).

173. *Intensive development*

This tendency is expressed in two directions. On the one hand, the setting up of some more generalized grounds for dismissal, such as: decrease of the amount of work (Art. 328, para. 1, item 3 LC), changes in the requirements regarding the holding of the position (Art. 328, para. 1, item 11 LC), objective impossibility of performing the assigned work (Art. 328, para. 1, item 12 LC), etc. On the other hand, it is expressed in the employer's right to selection (Art. 329 LC), etc.

174. Steps are taken towards certain *liberalization* of the regime of dismissal, and increasing its flexibility and extending the employer's right to dismissal (see Nos. 172-173 above). This tendency should be further stimulated and continued.

175. Introducing greater adequacy and fairness in the preliminary protection in dismissal under Art. 333 LC and directing it to vulnerable categories of employees who need it: increasing the intensity of the legal defence in the cases of dismissal of women-employees who are pregnant (Art. 330, para. 5 LC) or are using their leave for pregnancy and childbirth (Art. 333, para. 6 LC), etc.

176. The legal regulation of the termination of the employment relationships in the national legislation is approximated to the legal defence norms contained in the acts of the European Union, the European Social Charter and the ILO Conventions: extension of the preliminary protection in dismissal of women-employees who are pregnant or are using their leave for pregnancy and childbirth (see Nos. 100-105 above), the regime of collective dismissals, preservation of the employment relationships in transferring the enterprise and other changes of the employer, introduction of the procedures of information and consultations, etc.

177. In the last 15 years Bulgarian legislation has introduced some important procedural mechanisms in the regime of dismissal. Thus it has given the sign of taking the way to its *procedualization*, this being a common tendency in the development of modern European labour law.[19] However, for the time being, this tendency in Bulgarian labour law mainly concerns the collective dismissals, and not the individual ones. And the latter continue having their considerable place in the termination of employment relationships.

C. Proposals for improvement

178. The operative legal regulation of the termination of employment relationships can be improved in the following main directions.

179. It would be better if the grounds for dismissal with a notice are supplemented with certain *new and more generalized grounds* which provide the employer with the right to react to the dynamic development of the activity of the enterprise, the competition and the market fluctuations, and with an introduction of more flexibility and openness in the current strict exhaustiveness and casuistic enumeration in dismissal both with and without a notice. For instance, such new generalized grounds might be the following ones: the presence of *serious economic reasons* requiring that the employee be discharged, the presence of important needs in the activity of the enterprise, etc. Thus the legislation will get closer to the "valid reasons" for dismissal (Art. 24 of the European Social Charter, Art. 4 of the ILO Convention No. 158, Art. 31 of the Charter of Fundamental Rights of the European Union).

180. It would be right if the preliminary protection in dismissal also extends to those representatives of the employees who are elected by the employees' General Assembly under Art. 7, para. 2 LC. Owing to the functions they perform – protection

[19] Au-delà de l'emploi (sous la direction de **Alain Supiot**), Paris, Flammarion, 1999, pp. 233-235 ; **A. Supiot**, Homo juridicus, Paris, Seuil, 2005, pp. 197-198

of the interests of all employees – they deserve to enjoy the legal defence in dismissal, which is currently provided for trade union activists (Art. 333, para. 3 LC – see Nos. 100-105 above).

181. As far as the legal regulation of judicial defence against wrongful dismissal is concerned, it is worth discussing the possibility of providing for an additional compensation (apart from the compensation under Art. 344, para. 1, item 3 LC) as an alternative to the right of the wrongfully dismissed employee to reinstatement in the previous job – for instance, at the amount of the employee's annual gross labour remuneration for the work he/she has performed, calculated as at the time the court decision for the recognition of the dismissal as wrongful was rendered. On the other hand, it would be right to provide for an opportunity of a court agreement between the parties to the litigation at the time this matter is finally settled in the course of judicial proceedings.

182. It is advisable that a study be made of the ILO Convention No. 158 of 1982 and the Convention be ratified by the country in order for its resolutions to be used in the domestic law of the country.

183. It is necessary that steps be taken for extending the procedures of information and consultation with the representatives of the employees. These procedures should be extended and should also cover the representatives of the employees elected by the General Assemblies of the employees. That is extremely necessary in view of the continuing drop in the syndicalization of the employees in the country, because of which more and more employees have no representatives at the workplace to protect their interests in employment relationships. It is justifiable to make efforts to overcome the tacit, yet tangible resistance of the management staff of some representative trade union organizations who are trying to monopolize the representation of the employees' interests and regard the representation of the employees by representatives elected by themselves as a rival of their trade union activity. Such conduct injures the interests of a large part of the employees.

184. It is advisable to take serious measures for dramatic speeding up of legal defence against wrongful dismissal. The existing tardy execution of labour law justice is a violation of the principal right to fair judicial proceedings within a reasonable term under Art. 6 of the European Convention on Human Rights. Thus, although the legal defence against wrongful dismissal has become justiciable in the domestic law, actually its application is not sufficiently effective because of its tardy implementation.

185. The approximation of Bulgarian labour law as a whole, and particularly the labour law in the field of termination of employment relationships, is not a one-time action with a fixed "term of accomplishment", but rather a constant process in the development of labour law. This requires that even after Bulgaria's accession to the European Union, which is expected to take place on 1 January 2007, our national labour law and employment relationships jurisdiction should follow the European standards at an unabated pace and intensity.