

**TERMINATION OF EMPLOYMENT RELATIONSHIP**  
**LEGAL SITUATION IN THE CZECH REPUBLIC**

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## INTRODUCTION

Termination of an employment relationship is one of the most important institutes of labour law because it closely affects both parties in their contractual relationship. Therefore, it is necessary for the legal regulation to comply with the fundamental principles governing labour law and expressed both in international instruments and national regulation. These fundamental principles can be considered as follows:

- the right to work together with the protection of stability of employment
- prohibition of discrimination
- freedom of work together with the prohibition of forced labour

The institute of terminating an employment relationship is an institute being included into the sphere of “private law” and should be governed by the principle stipulated in provisions of Article 2, para 4 of the Constitution of the Czech Republic and Article 2, para 3 of the Charter of Fundamental Rights and Freedoms – “Everybody may do what is not prohibited by law and nobody may be forced to do what the law does not command” but its regulation reflects, first of all, the principle of protecting the stability of work involvement being the implementation of the principle of the right to work established in Article 26, para 3 of the Charter.

The importance of the right to work in the form of protecting the stability of employment results especially from the provisions of Article 15, para 1 and Article 30 of the Charter of Fundamental Rights of the European Union and Article 24 of the revised European Social Charter. The Czech constitutional law and order does not comprise the expressly stated principle of stability of employment but the legal regulation for terminating the employment relationship undoubtedly and unambiguously results from it. The consequence of its application can be seen in individual possibilities terminating an employment relationship do not depend on the expression of will of the parties to the employment but the Labour Code, in its mandatory legal regulation, determines particular legal facts and such a legal consequence is connected with them.

As I have mentioned that the termination of an employment relationship is governed especially by the principle of stability of work involvement, it does not mean at all that the possibility of terminating the employment is excluded. It means the exclusion of “wild” ways which are not approved by the law and it means the establishment of such ways which protect particular interests of both parties to the employment relationship. Thus, at the same time, the legal regulation of terminating the employment must enable the employers to react to the needs of their enterprises and to change the working collective depending on economic, technological and manufacturing changes. It must enable them not to be forced to employ the redundant employees for whom the jobs do not exist any more, the employees who break the work discipline or lag behind. Thus, the legal regulation creates the presumptions for desirable mobility of labour and it enables to implement structural changes in national economy. However, the legal regulation governing the termination of an employment relationship should provide the employee, who properly performs the duties, with the legal guaranties against unjustifiable unilateral termination of an employment relationship by the employer. The legal regulation results from the fact that due to the termination of the employment the employees lose the remuneration for the work done and therefore the level of their material welfare as well as of their families decreases and moreover, the termination of the employment, in numerous cases, also results in unfavourable social and psychological impacts and it may mean endangering the social integration of the ex-employees.

Due to the fact that the individual ways of terminating the employment relationship are mandatorily regulated by the legal regulations, another possibility to bargain different

ways for terminating the employment relationship in a collective agreement, contract of employment or another contract is excluded. Therefore, we may come to the conclusion that the principle embodied in Article 2, para 4 of the Constitution of the Czech Republic and in Article 2, para 3 of the Charter is not reflected in its full extent and the parties are not given the absolute freedom to make any act resulting in terminating the employment relationship but they may make only such a legal act which is expressly regulated in the relevant regulation. This conclusion may be supported even by the reference to the decision of the Municipal Court in Brno that held that: “If the text relating to terminating the employment relationship does not expressly state which of the ways should be applied, the Court itself may, according to the facts stated in the text, or circumstances under which the expression of the employer’s will has been made, consider the ways as stated in Section 42, para 1 of the Labour Code and how the employment relationship was terminated.”<sup>1</sup>

The legal regulation of terminating an employment relationship also reflects the principle of prohibiting forced labour to a great extent, as laid down in Article 9 of the Charter. As a consequence of the effect of this principle, it is “easier” to terminate the employment by the employee rather than by the employer (namely the effect of this principle appears when the employee terminates the employment).

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<sup>1</sup> Vide Judgment of Municipal Court in Brno No. 49 C 143/95 of 4 June 1996, in: *Právní rozhledy*, 1996, No.11, p.530

## 1. SOURCES OF THE LEGAL REGULATION

The basic framework for regulating employment relationships is provided for in the Constitution of the Czech Republic and the Charter of Fundamental Rights and Freedoms reflecting even the principles included in the international conventions which the Czech Republic is bound by. The basic instruments include the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the European Social Charter, the Charter of Fundamental Rights of Workers, and the Charter of Fundamental Rights of the EU, that establish the right to work as a basic social right. The implementation and guaranty of the right to work are included in the general legal regulation which follows from the above mentioned instruments. The establishment and guaranty of the right to work substantially influence even the regulation for terminating an employment relationship because the right to work consists in the guaranty of certain stability of employment.

An employment relationship including its termination is regulated especially by Act No.65/1965 Coll., the Labour Code, as amended (hereinafter referred to as “the Labour Code”) which is of general nature and in accordance with the provision of Section 1, para 1 governs the employment relationship between employees and employers.

At the same time it is necessary to emphasize the fact that the provisions of Sections 2-6 admit even the special legal regulation of an employment relationship (service) by other legislation. It may be referred to as so called subsidiary and delegated applicability *in rem* of the Labour Code.

The delegated applicability of the Labour Code means that the employment relationship of particular groups of employees is governed by special legislation and the Labour Code is applied only if the special legislation thus provides. The special legal regulation for an employment relationship is established for the following groups of employees (Sections 4 and 5 of the Labour Code):

- labour relations of judges and judicial trainees (articling judges) – Act No.6/2002 Coll., on Courts of Law and Judges, as amended (hereinafter referred to as “Act No.6/2002 Coll.”);
- labour relations of public prosecutors and articled clerks (articling attorneys-at-law) – Act No.283/1993 Coll., on Public Prosecutor’s Office, as amended (hereinafter referred to as “Act No.283/1993 Coll.”);
- service of the members of the security forces – Act No.186/1992 Coll., on Service of the Members of the Police Force, as amended (hereinafter referred to as “Act No.186/1992 Coll.”); as of 1 January 2007 Act No.361/2003 on Service of the Members of the Security Force (hereinafter referred to as “Act No.361/2003 Coll.”);
- labour relations of civil servants - at present these labour relations are governed by the Labour Code, with the effect as from 1 January 2007 they will be governed by Act No.218/2002 Coll., on Service of Civil Servants in Administrative Authorities and on Remuneration of Civil Servants and Other Employees in Administrative Authorities, as amended (hereinafter referred to as “Civil Service Act”);
- service of members of the armed forces - Act No.221/1999 Coll., on Members of the Armed Forces, as amended (hereinafter referred to as “Act No.221/1999 Coll.”).

It is typical for the whole above mentioned group employment relationships (both employment relationships and service relationships) that the above mentioned special legislation include, in most cases, an independent regulation for termination an employment (service) relationships and the general regulation of the Labour Code is not applied to them.<sup>2</sup>

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<sup>2</sup> The special legal regulation will be dealt with in detail in a separate part.

The subsidiary applicability of the Labour Code means that a certain group of employment relationships is governed by the Labour Code unless special legislation provides otherwise. The subsidiary applicability of the Labour Code covers the following groups of employees (Section 5 of the Labour Code):

- labour relations of officials of the local self-governing areas - Act No.312/2002 Coll., on Officials of the Local Self-Governing Areas, as amended;
- labour relations of university teachers - Act No.111/1998 Coll., on Universities, as amended;
- labour relations of directors of public research institutions - a separate legal regulation does not exist;
- labour relations of transport employees, commanders of vessels and crews of inland-water and sea-going vessels - e.g. Act No.61/2000 Coll., on Sea Navigation, as amended;
- labour relations of employees of the Probation and Mediation Service - Act No.257/2000 Coll., on Probation and Mediation Service, as amended;
- labour relation of the Public Defender of Rights - Act No.349/1999 Coll., on Public Defender of Rights, as amended.

Unlike the group of special labour relations with the delegated applicability of the Labour Code where the special legislation even provides for the special regulation for terminating an employment (service) relationship, this group of labour relations with the subsidiary applicability of the labour Code, with rare exceptions, special legislation does not regulate any specific ways for their termination. It may be therefore concluded in general that the general legal regulation for terminating an employment relationship in the Labour Code applies, almost without variance, even to labour relations within the subsidiary applicability of the Labour Code.<sup>3</sup>

Labour relations may also be regulated by collective agreements. The framework, within which the collective agreements may regulate an employment relationship, is determined by the provision of Section 20, para 2 of the Labour Code establishing that “wages or other entitlements ensuing from labour relations may be regulated in collective bargaining agreements, within the framework of the provisions on labour relations.” The legal regulation for terminating an employment relationship included in the Labour Code is of a mandatory nature and there is no space for the regulation by collective agreements. It follows from the above said that collective agreements cannot affect the legal regulation for terminating an employment relationship. The only exception can be seen in the regulation of so called redundancy payment (the institute in relation to the termination of an employment relationship) where a partial space for the regulation by collective agreements has been created. This possibility will be mentioned further in analysing the general legal regulation for terminating an employment relationship.

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<sup>3</sup> Individual different situations will be dealt with hereinafter.

## **2. GENERAL REGULATION GOVERNING THE TERMINATION OF AN EMPLOYMENT RELATIONSHIP**

General regulation governing the termination of an employment relationship is included in the Labour Code and covers all kinds of employment relationships with non-substantial variations (parallel part-time employment) specified hereinafter.

In accordance with the provision of Section 42 the employment relationship may be terminated on the basis of the following legal facts:

- **subjective legal facts** made by the parties to the employment relationship
  - agreement to terminate the employment relationship as a bilateral legal act,
  - notice of termination of the employment relationship as a unilateral legal act by an employee or an employer,
  - instant termination of the employment relationship as a unilateral act by an employee or an employer
  - termination of the employment relationship during the probationary period as a unilateral act by an employee or an employer;
- **by virtue of official decisions**
  - an enforceable decision of a competent authority for the withdrawal of a residence permit,
  - a final decision of court on expulsion,
- **objective legal facts**
  - upon expiration of a fixed-term employment relationship,
  - upon the death of an employee.

### **2.1 AN AGREEMENT TO TERMINATE THE EMPLOYMENT RELATIONSHIP**

Terminating the employment relationship upon the agreement between an employee and an employer belongs to the easiest and most frequently used ways as far as the form is concerned. The employment relationship in this case terminates on the grounds of consenting minds of both parties to the employment relationship. As both parties agree on terminating the employment relationship, it is supposed that the termination of the employment relationship is both in the interests of an employee and an employer. Considering the consenting minds of both parties to terminate the employment relationship, it is not necessary to apply special rules that might protect the status of any person while terminating the employment relationship (unlike the notice of termination, when the protection of an employee is the strongest). If the employment relationship is terminated upon the agreement of the parties, there are no prohibitions excluding the possibility to make an agreement relating to some particular situations in an employee's life or social situation (e.g. in case of sickness, child care, etc.). The possibility to make such an agreement is not limited by any reasons stipulated by the law.

The employment relationship may be terminated upon agreement even in those cases when the unilateral act for terminating the employment relationship by an employer should not be taken into account at all. The termination of the employment relationship upon agreement may be applied for any kind of the employment relationship (covering the contract of employment for the indefinite period of time, fixed-term contract for employment or parallel employment).

Thus, the termination of the employment relationship upon agreement is the general way for terminating the employment the application of which is not in principle restricted by the law.

The termination of the employment relationship upon agreement may be characterized as a bilateral legal act by an employee and an employer, the consequence of which may be seen in terminating the employment relationship.

### **2.1.1 Essentials Relating to Subject-Matter in an Agreement on Terminating the Employment Relationship**

The legal regulation of the termination of the employment relationship upon agreement as laid down in the Labour Code is rather brief if we consider the special regulation included in Section 43 of the Labour Code. However, the provisions should be taken into account as the grounds for the subject-matter of the agreement to be determined.

It results from the provision of Section 43, para 1 that the agreement on terminating the employment relationship must always include:

- the expression of will of both parties to terminate the employment relationship upon agreement,
- the date by which the employment relationship will have been terminated.

Besides these substantive, objectively established essentials of the agreement on terminating the employment relationship (i.e. such essentials which must always be stated in the agreement), the agreement may even state the reasons (causes) as a consequence of which the party or the parties terminate the employment relationship (Section 43, para 2 of the Labour Code). The statement of reasons for terminating the employment relationship, however, is not an essential in a general sense. It results from the provision of Section 43, para 2 of the Labour Code that the reasons must be specified in the agreement if the employee so requires. In my opinion, the legal regulation comprises the possibility of so called subjectively determined essential relating to the subject-matter of the agreement on terminating the employment relationship. If an employee making an agreement states that they want the reasons for terminating the employment relationship to be included in the agreement, then the agreement on terminating the employment relationship shall not be concluded if the parties do not agree on this proposal. A similar conclusion has been reached by the Regional Court in Ústí nad Labem which held: “ If an employee proposes an organisation (an employer) the termination of the employment relationship upon agreement with the express requirement that this employment relationship terminates because of organisational changes in the organisation, then the termination of the employment relationship will be accepted upon the proposal for the agreement even if the written acceptance of the proposal did not expressly state this requirement unless it resulted from the content of the acceptance that the organisation requires the change of the proposal.”<sup>4</sup>

Let us come back, however, to the objectively established essentials of an agreement for terminating the employment relationship. The agreement should, first of all, include an unambiguous formulation of the intention to terminate the employment relationship. This requirement results from the general characteristics of legal acts and is unambiguously formulated in Section 43, para 1, the first part of the provision of the Labour Code.

The most important essential relating to the subject-matter of the agreement on terminating the employment relationship is the determination of the time by which the legal effects of an agreement should have occurred, i.e. the determination of the day by which the employment relationship will have been terminated (Section 43, para 1, the second part of the provision of the Labour Code).

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<sup>4</sup> Vide Judgment of Regional Court in Ústí nad Labem No. 11 Co 225/91 of 23 May 1991, in: Sb. rozh. NS, 1993, No. 1-2, p.83

The most typical and the simplest cases are those when the termination of the employment relationship is determined by the exact calendar date.

However, the moment of terminating the employment relationship may be determined in another way, e.g. the statement of a particular time. In this case, this is just another way of the calendar determination.

The day on which the employment relationship should be terminated upon agreement may be also determined contractually by another way, e.g. stating a different fact from the time (calendar) datum. However, stating another fact for determining the moment of terminating the employment relationship must be certain to such an extent that no doubts may arise as far as the day relating to terminating the employment relationship is concerned.

Other possible subject-matter essentials to be determined for the agreement on terminating the employment relationship might be referred to as the provisions of the Labour Code, particularly the provision of Section 241 (stipulation of a term in the agreement on termination the employment relationship) and Section 245 (reasons for discharge of an agreement on terminating the employment relationship).

The effect of an agreement on terminating the employment relationship may be bound by the terms agreed (Section 241 of the Labour Code). The agreement on terminating the employment relationship might include, first of all, a suspensive condition. In such a case, the employer and an employee may agree that the employment relationship under the agreement will terminate only as late as the situation agreed as a condition for its termination appears. Legal effects of an agreement are thus suspended and they depend on the performance of the condition agreed.

However, suspensive condition arrangements in an agreement on terminating the employment relationship may mean a rather long time of legal uncertainty for the parties if the employment relationship terminates, or when it terminates. The parties, should, therefore, as rule, combine the suspensive condition arrangement with the day by which the employment relationship should be terminated at the latest. The condition in the agreement on terminating the employment relationship may be agreed even in a negative way. The condition agreed in a negative way might include such arrangements in which the legal effects of an agreement are conditioned by the particular fact that will not have arisen by a particular time.

Performance of the condition agreed in an agreement has considerable legal consequences. The Labour Code therefore stipulates the ways how to consider the situations when the party who benefits from the non-performance of the condition deliberately obstructs such performance or when the condition is deliberately performed by that party who was not entitled to do so and benefits from such performance. In accordance with the provisions of the Labour Code, in case the party benefiting from the non-performance of the condition deliberately obstructs the performance, the agreement on terminating the employment relationship becomes unconditional and the employment relationship is terminated because as a consequence of deliberate behaviour of the party, the condition agreed has not been performed. Contrary to that, if the condition is performed by that party not entitled to do so and benefiting from the performance of the condition, its deliberate unauthorised performance is not considered (Section 241, paras 2 and 3 of the Labour Code).

The agreement on terminating the employment relationship may also include the reasons that entitle the parties to discharge this agreement (Section 245, para 1 of the Labour Code). The legal regulation itself fails to lay down expressly the reasons that would entitle the parties to discharge the agreement on terminating the employment relationship. Due to the fact that no reasons are generally stipulated, the agreement on terminating the employment relationship may be only discharged if such reasons have been in a particular agreement expressly agreed (Section 245, para 1 *in fine* of the Labour Code). In accordance with the general regulation the agreement on terminating the employment relationship may be



discharged due to an essential mistake (Section 245, para 3 of the Labour Code). An essential mistake can be understood as acting of one party by mistake that should have been known to the other party and the mistake related to such a circumstance that without acting by mistake the agreement would not have been made.

However, the discharge of an agreement on terminating the employment relationship in practice might be probably rare. In spite of this, it should be taken into account that such a discharge of the agreement is a unilateral act of that party on whose behalf the reason agreed for the discharge is shown or who acted by essential mistake. Under this unilateral legal act (discharge) the agreement becomes null since its very beginning, i.e. the legal position arises as if no agreement on terminating the employment relationship has been made. The agreement on terminating the employment relationship may be in any case terminated only by the time before its legal effects have arisen, i.e. before the employment relationship has been terminated.

The agreement on terminating the employment relationship has to naturally comply with general essentials of a legal act as well such as freedom and seriousness of will, certainty and comprehensibility of its expression.

### **2.1.2 Origin and formal essentials of an agreement on terminating the employment relationship**

An agreement on terminating the employment relationship is a bilateral legal act. The special regulation of Section 43 of the Labour Code fails to stipulate any rules for considering its origin. Therefore, the constitution of an agreement on terminating the employment relationship (i.e. the constitution from the point of view of the time and content) should be considered according to general provisions of the Labour Code, i.e. in accordance with Section 240 *et seq.*, especially in accordance with Section 244 of the Labour Code.

An agreement, pursuant to the provision of Section 244, para 1 of the Labour Code, shall be made as soon as the parties reach agreement on its terms. Any changes relating to the terms of the agreement made by either of the parties result in a new offer and the agreement has not been made (Section 244, para 3 of the Labour Code). In the same way, the general provision having been cited prescribes time essentials for making an agreement. The offer to make an agreement on terminating the employment relationship should be accepted within a period of time designated by the offeror. If the period is not designated, the offer must be accepted immediately if the parties negotiate verbally; otherwise it must be accepted without undue delay (Section 244, para 2 of the Labour Code). The delayed acceptance of an offer also has the character of a new offer and the agreement has not been made (Section 244, para 3 of the Labour Code).

An agreement on terminating the employment relationship under the provision of Section 43, para 2, must be in a written form. Therefore such an agreement constitutes a formal legal act without the sanction of being voidable due to failing to respect the written form. This conclusion is supported by the provision of Section 242, para 2 stipulating that an act in law shall be void because of failing to respect the form as prescribed only if it is expressly stipulated by the Labour Code or another legal regulation. Considering the fact that the provision of Section 43 does not include any expressly stated sanction for failing to respect a written form as prescribed, it should be inferred that even the agreement on terminating the employment relationship made verbally or exceptionally made even by an implied expression of will should be valid. In the connection with the verbal or implied expression of will the parties to the legal act should be aware of the possibility of facing the failure of evidence in case the termination an employment relationship is, in some relations, the cause of a legal dispute.

Making an agreement on terminating the employment relationship in a written form is undoubtedly more advantageous. The advantage of a written form is more obvious even in the connection with the application of the provision included in Section 244, para 5 of the Labour Code. Pursuant to this provision it is sufficient for an agreement to be made in a written form if both the offer and acceptance are in writing. The written statements of the parties do not have to be comprised in a single document.

### **2.1.3 Summary**

The legal regulation of an agreement on terminating an employment relationship – in my opinion – complies with the abovementioned principles affecting the termination of an employment relationship. It is an expression of the freedom of will attributed to the parties to the employment relationship and it enables them to solve the termination of their employment relationship without conflicts and disputes.

## **2.2 NOTICE OF TERMINATION OF AN EMPLOYMENT RELATIONSHIP**

Notice of termination of an employment relationship is a unilateral legal act that can be made by any party to an employment relationship, i.e. an employee or an employer. The termination of an employment relationship by notice means that the employment relationship terminates upon the expression of will by one party independently of the expression of will of the other one. The addressee (i.e. the party whom the notice is given to) does not necessarily have to agree with being given the notice.

It is quite clear that such a unilateral invasion may considerably affect the position of that person whom the notice is given to, their vital interests may be considerably affected or their social status may be endangered. In order to mitigate the consequences (they cannot be completely avoided), the legal regulation establishes numerous substantive rules that determine the presumptions under which the employment relationship may be terminated by notice and what requirements are related to such a legal act. When comparing the position of parties to an employment relationship, it is undisputable that the protection of these parties against unfavourable impacts of the notice does not have to be the same for both of them. This allegation results, first of all, from the comparison of an economic status of both parties taking into account that the economically stronger party, i.e. the employer, has a stronger position. This opinion has been reflected even in the legal regulation where, besides general substantive stipulations and characteristics of the notice being related both to the employee's and employer's notices, further special substantive stipulations exclusively for the employer are laid down. Due to this regulation, the position of an employer in terminating an employment relationship becomes more difficult and the opinions frequently appear that the current legal regulation does not allow the employer to terminate an employment relationship at all. I do not think this opinion should be shared, in my opinion, the main impediment can be seen in inconsistency of employers in the exercise of some duties, but also in the rights of employers to control employees. At the same time, it may be admitted that the way of the legal regulation for terminating an employment relationship is rather out-of-date and the forthcoming development might require some partial amendments in this sphere, particularly in harmonizing the legal regulation with European standards in such a way in order that an employer might have a better opportunity to terminate an employment relationship unilaterally.

In respect of specific features being found in the legal regulation of the notice, as mentioned above, the attention will be furthermore paid, first of all, to the analysis of general characteristics and general substantive stipulations applied for both the employee's and

employer's notices, and then, special attention will be paid to the specific features of the notice given by an employer and the notice given by an employee.

## **2.2.1 General Substantive Stipulations for the Validity of Notice**

### **Parties to Notice**

Notice of terminating an employment relationship may be given by both an employee and an employer. In order to give notice of terminating an employment relationship, an employee must have legal capacity by virtue of Section 11, para 1 of the Labour Code. The capacity of a natural person to have rights and obligations in labour relations and the capacity, by their legal acts, to acquire these rights and undertake these obligations arises on the day a natural person reaches the age of 15 years.

Even the juvenile employees have, pursuant to Section 11, the capacity, by their legal acts, to acquire rights and undertake obligations in labour relations. Their capacity is not restricted by law but the provision of Section 164, para 2 of the Labour Code requires an employer inform a statutory representative or guardian *ad litem* of a juvenile employee about the fact that a juvenile employee terminates an employment relationship by notice. Failure to comply with this "warning" requirement, however, does not have any influence upon the validity of a legal act by a juvenile, it does not substantively stipulate the validity of notice. Even an employer is a party entitled to give notice of terminating an employment relationship. By virtue of Section 9 it is an authorised representative or another top manager of an employer that acts on behalf of the employer if such authorisation to do so results from special legislation. This conclusion has even been supported by the decision-making practice of courts as follows: "Authorisation to legal acts concerning labour relations which are also performed, besides an authorised representative, by other employees, especially top managers as a result from the offices they hold established under Articles (organisational regulations), results directly from the provision of Section 9, para 1 of the Labour Code and therefore the abovementioned employees do not have to acquire a special written authorisation to such legal acts."<sup>5</sup> Who is the authorised representative of an employer is determined by that legal instrument on the basis of which the particular employer was established (memorandum of Association, Articles of Incorporation, or Trade Licence Certificate, if the employer is a natural person). Of course, the determination of an authorised representative may also rely on the entry in the Commercial Register. Other managerial staff authorised to act on behalf of the employer as the authorised representatives may be appointed as prescribed in the Articles of Association or other instruments. Even in this case an employee of an employer may act on behalf of an employer as the authorised representative as stated in writing (Section 9, para 2 of the Labour Code).

### **Forms of Notice**

Notice must be given as stated in Section 44, para 1 of the Labour Code. In respect of the importance of notice for the parties to an employment relationship, the Labour Code absolutely unambiguously requires the notice be given in writing. This provision applies to all cases of notice irrespective of notice given either by an employee or an employer, full-time employment relationship or parallel one.

Unlike an agreement on terminating an employment relationship (where the written form is also required), failing to observe the written form in notice results in nullity of this legal act. This conclusion results from the provision of Section 242, para 2 of the Labour Code and Section 44, para 1 of the Labour Code.

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<sup>5</sup> Vide the Judgment of the High Court in Prague No. 6 Cdo 45/94 of 30 July 1995, in: *Právní rozhledy*, 1997,3, p.139.

The special provision relating to the form of a legal act is applied for those employees who are not able to read or write (Section 240, para 2 of the Labour Code).

### **Delivery of Notice**

Notice is a unilateral legal act addressed to an individual and therefore it involves a necessary requirement for a legal act to be perfect, i.e. the delivery of notice to an addressee, the other party to an employment relationship. The necessity of delivery results from the provision of Section 44, para 1 of the Labour Code. The delivery of notice to the other party is important because it is connected with numerous consequences (the running of notice periods is determined according to the delivery, the observance of the time limits as set up in Section 46, para 3 of the Labour Code is considered according to the delivery, etc.).

The way how to deliver the documents from an employee to an employer is not expressly laid down in the general legal regulation. This fact, however, does not prevent such a procedure to be regulated by the internal rules of an employer. If the employer fails to do so, then the general provisions of the Post Office Rules are applied.

Contrary to that, the Labour Code expressly regulates the way of delivering notice from an employer to an employee, particularly in the provisions of Section 266(a) of the Labour Code. Notice belongs, undoubtedly, to the documents relating to the beginning and termination of an employment relationship, and therefore, in accordance with the provision of Section 266(a), para 1 it must be delivered into the hands of an employee. Notice should be served on an employee by an employer at the workplace, place of residence or anywhere an employee can be reached. Only in case such delivery is not possible, an employer may deliver notice through the licence holder for postal services (especially by post). Notice by post is sent by an employer to the last known address of an employee as a registered letter with a receipt including the words “to be delivered into the hands of the addressee” (Section 266(a), para 2 of the Labour Code). The employer’s duty to deliver a document is complied with as soon as the employee takes the delivery of the document. If the employee has not been reached despite of residing in the place of the delivery, the document is filed with the competent post office or local authority and the employee should be notified of it as appears to be necessary. The document is filed for 10 days. If the document is not collected within this period, the postal services licence holder makes a note about it on the envelope containing the document and returns it to the employer.

The delivery of particular documents is governed by the legal fiction for the delivery pursuant to Section 266(a), para 4 of the Labour Code. The delivery of a document is considered to be accomplished as soon as the postal services licence holder returns it to the employer as undeliverable and the employee has obstructed the delivery of a document by their acts or omissions. The legal fiction for the delivery arises even if the employee has refused to accept the delivery of a document.

### **Notice Period**

It is typical for the termination of an employment relationship by notice that the legal effects of the expression of will are not related directly to the delivery of a document but indirectly in such a way that the legal effects are suspended for a particular time which is called the notice period. The running of the notice period then depends on the delivery of notice and therefore we claim that the delivery itself affects the legal effects indirectly. The existence of a notice period should ensure so that the unilateral termination of an employment relationship may not harm inadequately the other party to an employment relationship by its unexpectation. It is assumed that in the course of the notice period it will often be possible to solve the most serious problems related to the termination of an employment relationship, especially the employee will be able to look for another job and the employer will be able to

look for another employee. The notice period itself does not guarantee the parties to an employment relationship an unlimited duration of an employment relationship but it protects against immediate effects of its termination. A notice period can be understood as a period of time that should pass since the expression of will of a person to terminate an employment relationship to the termination of an employment relationship.

The regulation of the Labour Code distinguishes two kinds of notice periods, namely

- regular notice periods in accordance with Section 45, para 1 of the Labour Code in the length of two months, or three months in case that the notice is given by an employee pursuant to Section 46, para 1(a-c) of the Labour Code and
- special notice periods for notice of terminating a parallel employment relationship (15 days) pursuant to Section 70b, para 1 of the Labour Code.

The length of notice periods is regulated mandatorily in the Labour Code, its extent cannot be changed upon the agreement of the parties or collective agreement; the running of the notice period and its length is not affected by the incorrect statement of will of the party. The statement of a notice period in a written expression of will of the party is not necessary (the requirement for the statement cannot be indicated as a substantive stipulation for the validity of notice) because the time suspension of terminating an employment relationship is expressly laid down by law. The party may make influence upon this time only indirectly by the delivery of notice as mentioned hereinafter.

The length of a notice period (with the exception of a special notice period for a parallel employment relationship) is designed in months. For calculating the time, however, the general provisions of Section 266, para 2 of the Labour Code on time calculations cannot be applied but the special legal regulation of Section 45, para 2 of the Labour Code. Pursuant to this provision, a notice period shall commence on the first day of the calendar month following the delivery of notice and end upon the expiry of the last day of the relevant calendar month and by this day an employment relationship is terminated. Exceptions from the abovementioned calculation of the running of a notice period result only from the provisions of Section 47, para 2, Section 48, para 2, Section 49(b) and Section 70b, para 1. It results unambiguously from the abovementioned provisions how the party may affect the moment of terminating an employment relationship. The only way is the time of the delivery since this time clearly indicates the beginning of a notice period. Thus, the time when the party delivers the notice determines indirectly when the employment relationship terminates. The establishment of the beginning and the end of a notice period is also independent of the fact whether the day is a working day or a day off or even a public holiday.

A regular period of notice as laid down in the Labour Code can be used in two different lengths, particularly either two months or three months. A general length for a notice period is two months and it applies both for the notice by an employee and that of an employer. Only in case an employer gives notice because of reasons comprehensively defined in Section 45, para 1 and particularly the reasons in accordance with Section 46, para 1(a-c) of the Labour Code, the regular period of notice is applied in the length of three months.

The provision of Section 45, para 2 of the Labour Code includes the exceptions from the above mentioned rule relating to the calculation of the running of the notice period. The first exception can be seen in extending the notice period according to Section 47, para 2 of the Labour Code when the employer is obliged to ensure that the employee, in prescribed cases, gets a new suitable job to be performed for another employer. The notice period is extended, or the notice period ends upon the performance of the duty by the employer, unless the employer and the employee agree otherwise.

Another exception is included in the provision of Section 48, para 2 of the Labour Code during a protective period. In accordance with this provision, if an employee is given notice prior the beginning of a protective period so that the notice period might expire during such period, the protective period shall not be considered as a part of the notice period and the employment relationship shall terminate after the end of the remaining notice period unless the employee states that they will not insist on the extension of the employment relationship.

Another exception from the running of a notice period is included in the provision of Section 49(b) of the Labour Code. The provision of Section 49 in general regulates the situations when the prohibition of notice in so called protective period cannot be applied. If, on the grounds for the immediate termination of an employment relationship, a female employee is given notice before going on maternity leave (i.e. the notice was given to a pregnant female employee) or a male employee going on parental leave so that the notice period would expire during the maternity or parental leave, the notice period shall end at the same time as the employee's maternity or parental leave.

The last exception from the running of a notice period is included in the provision of Section 52, para 6 of the Labour Code. The provision of Section 52 regulates in general the institute of so called collective redundancies (see hereinafter). In the connection with collective redundancies, the employees are more extensively protected because their employment relationships terminated by notice of an employer will terminate no earlier than 30 days after the day when the employer's written record under Section 52, para 4 of the Labour Code is delivered to the competent Labour Office, unless the employee declares that they do not insist on the extension of an employment relationship (non-mandatory rule). This provision cannot be applied if a bankruptcy order has been adjudged against the employer, or if composition proceedings have been affirmed.

### **General Essentials of a Legal Act**

Notice as a unilateral legal act must certainly comply with general particulars of a legal act as implied by the provision of Section 242, para 1 of the Labour Code. It is especially important to become aware of the fact that the expression of will must be certain and comprehensible. It must unambiguously result from the expression of will that the party is willing to terminate an employment relationship unilaterally and particularly by notice and that the will to do so is free and serious. When considering notice as a legal act, it is necessary to use the rule of application set up in Section 240, para 3 of the Labour Code stipulating that the expression of will shall be interpreted, taking into account the circumstances under which it was performed, in accordance with good morals.

### **Withdrawal of Notice**

Notice is a unilateral legal act, requiring the delivery of a document to the other party to an employment relationship, to be completed. Since the delivery of a document, the party giving notice is bound by the expression of will and it cannot be additionally changed or unilaterally withdrawn. Until the delivery of a document, the party may, of course, independently dispose of the expression of will but always in a way that the addressee (the party whom the notice is given to) must be informed about it at the same time when the document comprising the original expression of will is delivered, at the latest.

After the delivery of notice, the Labour Code allows its subsequent revocation but only in the form of so called withdrawal of notice with the consent of the other party. It may be said that the withdrawal of notice is a bilateral legal act, a certain agreement on continuing an employment relationship. The possibility of withdrawal of notice (removal) is expressly allowed in the provision of Section 44, para 3 of the Labour Code. The withdrawal of notice and the consent of the other party with the withdrawal of notice as laid down in the Labour

Code are in a written form but failure to observe the prescribed form does not result in any consequences for the nullity of the withdrawal of notice. Notice may be withdrawn with the consent of the other party until the expiration of a notice period at the latest. After the expiration of a notice period an employment relationship was terminated, notice gave rise to the relevant consequences and it is not furthermore effective. In such a case, there is nothing to be withdrawn. The time within which notice can be withdrawn may be extended only in case of the dispute on the nullity of notice – as held by the Supreme Court of the Czech Republic: “If an employee (organization) brings an action for the nullity of terminating the employment relationship by notice before court pursuant to Section 64 of the Labour Code, the termination of the employment relationship by notice, which has been delivered, may be withdrawn with his consent before final and conclusive end of the proceeding relating to the decision of nullity of notice at the latest, and even if the notice period connected with this notice had already passed ( if the day by which the employment relationship should have been terminated had passed).”<sup>6</sup>

### **2.2.2 Notice Given by an Employee**

The notice given by an employee is not regulated by any substantive stipulations in the Labour Code. Only Section 51 of the Labour Code comprises a stipulation establishing that an employee may give notice to his employer for any ground whatsoever or without stating a ground. Due to this provision, the conclusion cannot be drawn that stating a ground for notice might be the substantive requirement for the validity of notice given by an employee. Even the notice without stating a reason may be valid. If an employee states a reason in his notice, then we think that even in this case the provision of Section 44, para 2 can be applied, i.e. that the grounds for termination may not be subsequently changed. A similar conclusion can be, however reached, even on the basis of general provisions of the Labour Code and namely that the legal act is perfect(complete) by the time of the delivery and since that moment the legal person has been bound by his expression of will.

Therefore, we may only repeat that the notice may be valid only on the basis of the abovementioned substantive requirements and its general characteristics. The notice of an employee must comply with the

- written form
- delivery to the other party to an employment relationship
- general essentials of a legal act (Section 242, para 1 of the Labour Code)

Legal effects of notice given by an employee may be suspended for a regular period of notice in the length of 2 months beginning on the first day of the following month after the delivery of notice to an employer and ending on the last day of the next month. The employment relationship is also terminated by this day. Notice after the delivery can only be withdrawn by an employee with the consent of an employer.

The abovementioned regulation of notice given by an employee embodies the principle of the prohibition of forced labour laid down in Article 9 of the Charter. If an employee is not willing to work furthermore for a particular employer, then his employment relationship always terminates upon this unilateral legal act without the necessity of existing some foreseen grounds or reasons under the law. Therefore, it may be concluded that the current legal regulation for the notice given by an employee fully complies with the freedom of labour (the prohibition of forced labour).

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<sup>6</sup> Vide the Judgment of the Supreme Court of the Czech Republic, No. 21 Cdo 2625/98 of 15 April 1999, in: Soudní rozhledy, 1999,8,p.261

### **2.2.3 Special Substantive Conditions of Notice Given by an Employer**

Unlike the notice given by an employee, that besides general particulars for its validity does not require further special essentials, the notice of terminating the employment relationship given by an employer is more complex because this expression of will requires more numerous special substantive conditions.

#### **Justifiable Grounds for Notice**

One of the most characteristic features of notice given by an employer is its justifiability. Pursuant to provision of Section 44, para 2 of the Labour Code the notice may be given by an employer only on the grounds expressly laid down in Section 46, para 1 of the Labour Code. Moreover, the existing reason stipulating the possibility of notice of termination must be stated and factually determined by the expression of will for the notice to terminate an employment relationship without the possibility of being substituted by another reason. The grounds for termination may not be subsequently changed. The statement and determination of facts for the grounds of notice of termination is a substantive condition for the validity of notice given by an employer. Without stating the grounds or even without its determination of facts the notice given by an employer is null and void. A particular reason constituting the notice given by an employer must be factually determined, a mere reference to a particular provision of the Labour Code is not sufficient. Due to the fact that individual provisions comprise more grounds for the notice of termination, such expression of will would be uncertain and moreover, it would be contrary to the provision of Section 44, para 2 of the Labour Code. It follows from the above cited provision of Section 44, para 2 of the Labour Code that: “the grounds for termination must be given in a written notice of terminating the employment relationship in such a way in order to be quite clear what the particular reasons are resulting in the fact that the employer terminates the employment relationship with the employee and not to give rise to any doubts what the employer wanted to show by the legal act, i.e. which justifiable ground for termination as stated in the provision of Section 46, para 1 of the Labour Code was applied, and, to ensure that the grounds for termination may not be subsequently changed. To comply with the conditions for a valid notice of terminating an employment relationship, it is therefore necessary to make the ground for termination specific in a prescribed way by stating the facts that support the employer to rely on a constituted justifiable reason without giving rise to the doubts which grounds serve for terminating an employment relationship of an employee. The facts having appeared as the grounds for notice of termination do not have to be detailed because the notice of terminating an employment relationship is null and void for uncertainty and incomprehensibility of the expression of will only in case it was not possible to find out even by the interpretation of the expression of will, why an employee was given a notice of termination.”<sup>7</sup> The importance of the interpretation for considering necessary specification of the grounds for the notice of termination results even from the Judgment of the Supreme Court of the Czech Republic that held: “If it is not possible to conclude due to the wording of the notice of terminating the employment relationship itself for uncertainty and incomprehensibility of the expression of will what the factual determination of the grounds for termination are based on, the notice of terminating the employment relationship is null and void unless it is found out by the interpretation of the expression of will why an employee has been given notice of termination. The interpretation of the expression of will cannot be used as the ‘substitution’ or ‘addition’ of will of a person giving notice and such will did not exist at the particular time or if it did, it

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<sup>7</sup> Vide the Judgement of the Supreme Court of the Czech Republic No. 21 Cdo 535/2000 of 4 January 2001, ASPI 2 December 2005.



was not expressed.”<sup>8</sup> At the same time, it is necessary to remember – that the grounds for the notice of termination – as it has already been mentioned above – can be seen in a factual situation itself, therefore it is not decisive for the validity of notice of termination whether the employer giving notice stated proper legal qualification.<sup>9</sup>

Grounds for the notice of termination are comprehensively defined, they cannot be agreed on in a contract (neither in an individual employment contract nor in a collective agreement). All such agreements would be, in accordance with Section 242, para 1(a) of the Labour Code, null and void for being contrary to the law.

On the other hand, nothing prevents an employer to state in the notice of termination several reasons for terminating an employment relationship. This conclusion also results from case law: “Notice of terminating an employment relationship given to an employee is not null and void only because an employer claimed more grounds provided for in the provision of Section 46, para 1 of the Labour Code. The fact given results in considering the grounds for termination separately in the proceeding commenced by the action of an employee in accordance with the provision of Section 64 of the Labour Code and it is also necessary to consider independently their effects for further continuance of an employment relationship; if an employment relationship terminates upon the basis of one of them, other grounds claimed become obsolent.”<sup>10</sup>

In connection with considering the future forms of labour legislation, the necessity of amending the legal regulation for the justifiability of notice of termination is often mentioned, especially aiming at the requirement the justifiability of notice of termination be completely omitted. We do not think that this opinion should be completely shared. A certain modification of a notice of termination given by an employer will have to be implemented but any absolute omission of the requirement for justifiability is unreasonable and it would be in violation of the provision of Article 4 of the ILO Convention No.158 (1982). It might be more appropriate to distinguish an individual termination of an employment relationship where a rather short period of notice is quite common as well as it is not so rigorous, from a notice of dismissal relating to a greater number of employees, where harsh rules are applied in legal regulations that provide for an employer intending to do so very harsh conditions.

Individual grounds, included in the provision of Section 46, para 1, may be divided into two groups, namely

- grounds for giving notice of termination served by an employer [ Section 46, para 1(a-c) of the Labour Code] and
- grounds for giving notice of termination served by an employee [Section 46, para 1(d-f) of the Labour Code].

The differentiation of both groups can be clearly seen in e.g. the length of notice periods being 3 months for the first group and only two months for the other one. Furthermore, the differentiation is reflected even in other consequences relating to the termination of an employment relationship – redundancy or severance payment which is connected with the first group of grounds for giving notice of terminating an employment relationship.

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<sup>8</sup> Vide the Judgment of the Supreme Court of the Czech Republic No.3 Cdon 946/96 of 14 October 1996, in: Sb.rozh., 1997, 7, p.218.

<sup>9</sup> „Considering what grounds established in the provision of Section 46, para 1 of the Labour Code were stated by an employer for giving notice of terminating an employment relationship with an employee, the Court takes into account the presentation of facts for the reason applied. The circumstance, whether or how the employer legally qualified this reason, is not itself relevant.“ Vide the Judgment of the Supreme Court of the Czech Republic No. 21 Cdo 1524/98 of 3 November 1998, in: Soudní judikatura, 1999, 1, p.35.

<sup>10</sup> Vide the Judgment of the Supreme Court of the Czech Republic No.21 Cdo 2098/2004 of 8 March 2005, in: Soudní Judikatura, 2005, 7, p.522.

In accordance with Section 46, para 1, an employer may serve a notice of termination on an employee due to the following reasons:

**a) If the employer's enterprise (or undertaking), or part of it, ceases to exist – Section 46, para 1(a)**

The wording of Section 46, para 1(a) includes two grounds for giving notice of terminating an employment relationship, namely

- cessation of existence of an employer's enterprise,
- cessation of existence of parts of an employer's enterprise.

The cessation of existence of an employer's enterprise means that the company ceases to exist as a legal person without giving rise to new legal persons. This is an essential difference from so-called dissolution of an employer's enterprise when the dissolution is made by merger, consolidation or division, i.e. there are succeeding persons whom the rights and obligations arising from an employment relationship may be transferred to. When the employer's enterprise ceases to exist, it means that even the economic activities cease to exist and the employer thus loses not only legal but also factual possibility to employ employees.

The cessation of existence of an employer, however, does not constitute a legal fact resulting in the termination of existing employment relationships. Due to this situation, the existing employment relationships must be terminated upon the day of factual termination, and particularly in accordance with general rules relating to the termination of an employment relationship. It is, of course, possible to make an agreement between an employee and an employer on terminating the employment relationship but if they do not make any agreement, the notice should be served in accordance with the provision in such a way in order that the notice period might pass not later than the employer's enterprise ceases to exist.

The application of the ground for giving notice of termination relating to the cessation of existence of an employer's enterprise is of some concern as well because an employer in fact cannot comply with the duty pursuant to Section 46, para 2 of the Labour Code, i.e. to offer another job in the same place, since in respect of the cessation of existence of the employer as such, there are no vacancies available.

In case of the cessation of existence of the employer as such, a situation might occur that this employer ceases to exist before complying with all the duties having towards its (his) employees. In such a case, the provision of Section 251, para 2 of the Labour Code is applied, establishing that the body (authority) which made an employer cease to exist shall determine which employer shall satisfy the claims of the employees of the former employer. If the employer's enterprise is liquidated at the same time as it ceases to exist, the duty rests with the liquidator.

Section 46, para 1(a) of the Labour Code also comprises the ground for giving notice of termination consisting in the cessation of existence of a part of the employer's enterprise.<sup>11</sup> The ground for the termination appears if a part of an existing employer's enterprise ceases to exist ( a workshop, manufacturing unit, works, etc.) but the employer continues to exist as a

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<sup>11</sup> "A part of an enterprise organization) can be understood in the sense of the provision of Section 46, para 1(a) of the labour Code as an organizational unit, department or other part of an organization that carries out, within the framework of the organization, relatively independent activities and thus participating in completing the objectives of the organization itself. Such a part of the organization has, at its disposal, certain means (buildings, machines, tools, etc.) and premises for carrying out these activities, as a rule they are indicated in an internal management regulation of an organization (e.g. Articles of Association, Internal Rules) and the organization is usually headed by the leading manager of the organization (Section 9, para 3 of the Labour Code)." Vide the Judgment of the Supreme Court of the Czech Republic No.2 Cdon 1053/96 of 6 May 1997, in: Sbírka rozhodnutí NS, 1998, 1, p.33.

legal entity (natural person). Due to the cessation of existence only of a part of an employer's enterprise, notice of dismissal may be served only on those employees, whom, as a result of the cessation of existence of a relevant part of the enterprise, the work cannot be assigned in the place where they have worked in accordance with their employment contracts, i.e. who rendered work in that part of an employer's enterprise which has ceased to exist.<sup>12</sup> In this case, the employer (that part which remains) is obliged to fulfill its (his) duties in accordance with Section 46, para 2 of the Labour Code because the jobs may factually exist. Satisfying the claims of dismissed employees of that part which ceased to exist rests, to full extent, with the employer whom the employees worked for.

In both cases the ground for termination arises at the moment when the body (authority) empowered to finally decide that the employer's enterprise or its part ceases to exist. The factual cessation of existence is not necessary for the possibility of applying these grounds for termination.

#### **b) if the employer's enterprise or part of it relocates – Section 46, para 1(b)**

The ground, included in Section 46, para 1(b) of the Labour Code, consists in a relocation of an employer's enterprise or part of it. If the employer's enterprise relocates as a whole, a situation appears that the employer may employ, as a rule, all employees but not in the original place of work. If an employee (employees), however, do not agree with the change of the place of work and this change does not comply with the original employment contract, the employer cannot employ them in a new place where his (its) enterprise has been relocated. If the employer cannot even employ his (its) employee in the place of an employee's residence, in such a case, the ground for termination due to the relocation of an employee exists.

If only a part of an employer's enterprise is relocated, the situation is a bit more complicated. Notice of termination may be served if an employee is not willing to work in the place where a part of an employer's enterprise has been relocated and the employer does not have the possibility to employ him neither in the original place where the employer (the rest of it) remains nor in the place of an employee's residence.

The grounds for termination also arise at the moment when the body (authority) decides upon the relocation of an employer's enterprise or his (its) part; the factual relocation does not have to be implemented.

#### **c) if the employee is to be made redundant because of a decision by the employer or a competent body (authority) to change the enterprises' activities or its technology, to reduce the number of employees for the purpose of increasing labour efficiency, or to make other organizational changes – Section 46, para 1(c)**

The ground for giving notice of termination is, in this provision, construed in a special way. The ground for giving notice of termination, however, is not stipulated in this provision by the enumeration of the activities, technical equipment, etc. themselves. The ground for termination always consists in the redundancy of an employee, what is, however, in a causal link with the changes stated. Therefore, in order that the grounds included in this provision may be applied, the following requirements must be met. First of all, the decision by an employer or a competent body (authority) to change the enterprise's activities or its technology, to reduce the number of employees for the purpose of increasing labour efficiency, or to make other organizational changes must exist. The Labour Code or other

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<sup>12</sup> Vide the Judgment of the Supreme Court of the Czech Republic No.2 Cdon 727/96 of 3 June 1997, in: Soudní judikatura, 1998, 4, p.73

legal regulations do not lay down that “the decision on an organizational change should be accepted (issued) in writing, nor they suppose it should be declared (announced) by an employer or otherwise publicized; an employee, whom the decision on an organizational change may concern, may become familiar with the decision as late as in the notice of terminating the employment relationship.”<sup>13</sup> Moreover, it must be unambiguously shown that the changes introduced make an employee doing a particular kind of job redundant. Of course, an employer might have more employees doing the same kind of work, and as a result, due to the decision on changes, one employee may be made redundant. In such a case, the employer himself makes the decision which of the employees doing the same kind of work (or having the same qualification) will be dismissed.

The prerequisites for giving notice of termination pursuant to the provision of Section 46, para 1(c) of the Labour Code also comprise that “changing the enterprise’s activities, its technology equipment, reducing the number of employees for the purpose of increasing labour efficiency or making other organizational changes is the decision by an employer or a competent body (authority) due to which a particular employee was made redundant and that the causal link exists between the redundancy of an employee and the organizational changes introduced, i.e. that the employee was made redundant as a consequence of such a decision (its implementation in an organization). An employee becomes redundant for his employer, if the employer does not have, in respect of the decision on organizational changes, the possibility to employ an employee for the work to be done as agreed in an employment contract. The employers are allowed under the law to regulate the number of employees and their qualification to employ only so many employees with a particular qualification that corresponds to their needs. The choice of an employee who is to be made redundant is exclusively up to the employer; the court is not empowered, in this respect, to review the decision made by an employer.”<sup>14</sup> The above mentioned judicial decision includes an opinion that the choice, which of the employees doing the same kind of work will be made redundant, is an exclusive right of an employer and the court is not empowered to review this decision. I think, however, that due to the express establishment of the prohibition of discrimination in the provision of Section 1, para 4 of the Labour Code, it will be necessary to consider the course of an employer in the choice of an employee whom the notice of termination will be served on in accordance with Section 46, para 1(c) of the Labour Code to be made redundant, whether the choice was not of discriminatory nature. The provision of Section 1, para 4 of the Labour Code where the prohibition of discrimination is laid down is a general rule of interpretation within the framework of which all the provisions of the Labour Code must be applied.

Making the ground for termination more precise is implemented in courts’ decision-making on the nullity of the notice of termination both in negative and positive determination.<sup>15</sup>

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<sup>13</sup> Vide the Judgment of the High Court in Prague No. 6 Cdo 69/94 of 28 June 1995, in: *Sbírka rozhodnutí NS*, 96, 2, p.74.

<sup>14</sup> Vide the Judgment of the Supreme Court of the Czech Republic No. 21 Cdo 138/2003 of 23 May 2003, *ASPI*

<sup>15</sup> E.g. “If an employer decides that the activity carried out by an employee can be ensured otherwise than by means of persons employed and that therefore the job of an employee ceases to exist to save money, the ground for the termination of an employment relationship arises pursuant to Section 46, para 1(c) of the Labour Code, unless the regular activities of an employer are performed resulting from the objects clause.” Judgment of the Supreme Court of the Czech Republic No. 21 Cdo 733/2003 of 20 November 2003, in: *Soudní judikatura*, 2004, 1, p.36. Another judgment determines the ground for giving notice negatively: “If an employer or a competent body (authority) decides on reducing the number of employees for the purpose of increasing labour efficiency, the redundancy of an employee, whom the notice of terminating the employment relationship was served on in accordance with the provision of Section 46, para 1(c) of the Labour Code, is not in a causal link with such a decision, if the presupposed (by an organizational change established) reduction of the number of employees is to come into existence otherwise (without the necessity of terminating an employment relationship by notice),

Applying these grounds for the termination of an employment relationship, an employer must, of course, comply with the duties resulting from the provision of Section 46, para 2 of the Labour Code. The redundancy of an employee caused by the changes introduced and the compliance with the conditions of Section 46, para 2 represents a substantive stipulation for the validity of notice of terminating an employment relationship. The satisfaction of this condition in case of bringing the action on nullity of notice of termination must be proved by an employer.

**d) if the state of the employee's health is such, according to the opinion of a medical expert or a ruling of the state health administration authority or social security authority, that he is no longer able in the long-term to perform his existing work, or he is not permitted to do the work because he suffers from an occupational disease or faces the danger of such disease, or, according to a ruling of the competent public health protection authority he has been subjected at the workplace to the maximum permissible level of exposure – Section 46, para 1(d)**

An employer is entitled to terminate the employee's employment relationship by notice even if an employee is incapable for health reason in the long term to perform the existing work. The ground for termination, in this case, can be found only in the long-term incapacity. To the contrary, an employee incapable to work only temporarily is protected by the prohibition of being given notice of termination. Considering, whether the incapacity from work is temporary or long-term, results from the regulations relating to health insurance of employees and their pension insurance. Reviewing the state of health is within the competence of state health administration authorities or social security authorities. The existence of this ground for termination can never be reviewed by the employer himself.<sup>16</sup>

The ground for termination may also be applied if an employee is not permitted to perform the existing work because he suffers from an occupational disease or faces the danger of such disease. Occupational diseases can be understood as the diseases which arise as a consequence of a particular occupation if they emerged under the conditions set up by a legal regulation, particularly the decree of government No.290/1995 Coll. serving as a statutory instrument on pension insurance.

The ground for termination may also be applied if an employee is not permitted to perform the existing work because the maximum permissible level of exposure at the place of work has been exceeded according to a binding report of a competent public health protection authority.

In all those cases (in a simplified way the reasons may be referred to as the health reasons), however, the notice of termination is not primarily the instrument for solving the problem. It is necessary to become aware of the links among the individual provisions of the Labour Code. If these "health reasons" occur, an employer has the duty pursuant to Section 37, para 1(a) to transfer an employee to other work, or even to work of a different kind from that agreed in the employment contract, even without the consent of an employee. Only in case that the employer cannot provide such work because it does not exist, i.e. he cannot

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e.g. due to the notice given by another employee or by passing the time agreed for an employment relationship as a fixed-term employment relationship with other employees." Vide the Judgment of the Supreme Court of the Czech Republic No.21 Cdo 2580/2003 of 27 April 2004, in: Sbirka rozhodnutí NS, 2005, 5, p.236.

<sup>16</sup> A similar conclusion can even be found in the Judgment of the Supreme Court of the Czech Republic No.21 Cdo 2032/2002 of 18 July 2003: "Objectivization of the relation of work which has been performed to the state of health of an employer must be considered by an expert, [cf. "according to the opinion of a medical expert or a ruling of the state health administration authority" in Section 46, para 1(d) of the Labour Code, whose medical report must unambiguously state that the employer has lost the capacity to perform the existing work in the long term.]", ASPI

comply with the duties pursuant to Section 46, para 2 of the Labour Code, the notice of termination might follow applying some of the above mentioned grounds. The transfer of an employee to other work rather than giving notice of termination is assumed to be an instrument protecting an employee in a specific situation in life – long-term unfavourable state of health and difficulties in ensuring another job. At the same time, even the freedom of work should be guaranteed. The provision of Section 37, para 3 of the Labour Code allows to transfer an employee to other work even without an employee's consent. If an employee, however, did not agree with the transfer to other work, then the public interest for the protection of life and health and the prohibition of forced labour would come into conflict. In my opinion, it is always necessary to respect the freedom of work in this conflict, in case an employee does not want to perform the work he is transferred to. It follows from the legal regulation in force due to the application of Article 9 of the Charter (the prohibition of forced labour) that an employee can always refuse to perform such work and then the notice of termination may be served applying the abovementioned grounds for terminating an employment relationship.

The examination of a long-term health incapacity for the performance of the existing work by competent authorities must also have a prescribed form under the law: "The prerequisite for giving notice of terminating an employment relationship to be valid in accordance with Section 46, para 1(d) of the Labour Code can be seen only in such a medical report that does not allow another medical conclusion different from that of long-term losing the incapacity to perform the existing work. A mere recommendation of a medical practitioner for the change of the work performed because of the state of health of an employee is not sufficient, as well as the ground for terminating an employment relationship cannot be seen in a report which does not unambiguously implies that the incapacity of an employee to work is of the long-term character (is not merely temporary)."<sup>17</sup>

**e) if the employee does not meet the prerequisites laid down in statutory provisions for performance of the agreed work (job), or if, through no fault on the employer's part, he does not meet the requirements for proper performance of such work; if his failure to meet these requirements is the result of unsatisfactory work, the employee may be given notice for this reason only if, during the previous 12 months, the employer called upon him in writing to eliminate the defects (in his work), and the employee failed to do so within a reasonable period of time – Section 46, para 1(e)**

This provision includes a group of grounds for terminating an employment relationship relating to qualification of an employee to perform work as agreed in an employment contract. An employer may serve notice of termination on an employee if

- an employee fails to meet the prerequisites laid down in statutory provisions for the performance of the work agreed,
- an employee fails to meet the requirements, without the employer's fault, which are necessary prerequisites for proper performance of the work,
- an employee fails to meet the requirements which are necessary prerequisites for proper performance of the work as a result of unsatisfactory work.

Prerequisites for the performance of the work agreed must be laid down in statutory provisions and they are, as a rule, of an obligatory nature, i.e. they must always be complied with otherwise an employment relationship cannot remain in existence. Failure to comply

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<sup>17</sup> Vide the Judgment of the Regional Court in Ostrava No.16 Co 398/95 of 19 January 1996, in: *Právní rozhledy*, 1996, 6, p.290.

with them does not, however, result in voidability of an employment relationship but an employer is not allowed to require such work. The ground for notice of termination consists not only in the fact that an employee failed to meet the requirements when the employment relationship was established but also cessation of existence of these prerequisites during the continuance of the employment relationship (e.g. withdrawal of a driving licence). At the same time, an employer is not allowed, as soon as an employee loses the prerequisites required, to render work for which such prerequisites are necessary. A partial solution can be found in Section 37, para 2(c) of the Labour Code – transfer to other work but only for 30 working days in total in a calendar year.

Prerequisites required for the performance of a particular work may be set up even additionally during the continuance of an employment relationship. If such prerequisites are laid down in a statutory provision compulsorily, this fact entitles an employer to serve notice of termination on those employees who fail to meet such prerequisites.

In respect of an objective nature of the prerequisites as laid down in statutory provisions, it is not decisive for the application of this ground for notice of termination whether an employee fails to meet these prerequisites because of his fault or without.

Unlike the prerequisites, the requirements for proper performance of work do not have to be laid down in a statutory regulation. As a rule, they are established by an employer, they may be included even in an employment contract. The requirements may relate to both mental and physical characteristic features of an employee, moreover to other facts which may influence the completing of tasks at work. These requirements may relate to specific professional knowledge, a certain level of abilities, manual skills, physical characteristic features. Failure to meet these requirements should be considered in respect of a particular job or work which an employee is assigned to do at the workplace within that kind of work agreed. Neither this case includes the fault of an employee as a condition.

Notice of termination for failure to meet the requirements necessary for the proper performance of work can be served on an employee by an employer only if the latter is not responsible for such situation. Therefore the employer would not be able to rely successfully on this ground for termination if failure to meet the requirements was caused e.g. by the employer's defective organization of work.

A specific form of failure to meet the requirements for the proper performance of work can be seen in unsatisfactory results at work. In order that the notice of termination might be given, the following circumstances should be met:

- the existence of failure to meet the requirements necessary for the proper performance of work by an employee and failure to meet such requirements consists in unsatisfactory results of an employee at work,
- an employer is not responsible for such situation,
- an employer called upon an employee in writing to eliminate the defects within reasonable time but an employee failed to do so in a prescribed period.

**f) if the grounds exist upon which the employer might immediately terminate the employment relationship of an employee, or due to serious breaches of work discipline; for consistent but less serious breaches of work discipline, the employee may be given notice of termination if, during the previous six months in connection with such breaches, he was warned in writing of the possibility of being given notice of termination – Section 46, para 1(f)**

Pursuant to Section 46, para 1(f) of the Labour Code an employee may be given notice of termination

- under the grounds upon which an employer might immediately terminate an employment relationship with an employee,
- for serious breaches of work discipline and
- for persistent less serious breaches of work discipline if an employee, during the previous six months in connection with such breaches, was warned of the possibility of being given notice of termination.

The provision, being analysed, thus includes 4 grounds for giving notice of termination. The first group of grounds as embodied in the provision of Section 46, para 1(f) of the Labour Code may result in the immediate termination of an employment relationship. Therefore, all grounds (two) may be applied as they are laid down in Section 53, para 1 of the Labour Code. As far as the analysis of their content is concerned, everything submitted in connection with the immediate termination of an employment relationship can be applied.

Notice of termination under the ground of a serious breach of work discipline is not conditioned for this application of this ground for notice of termination by either the repeated breach of work discipline or the previous written warning about the possibility of giving notice of termination. The breach of work discipline must be quite intensive. When determining this feature, the extent of the employer's fault will be considered as well as the fulfilment of duties at work, and, of course, the consequences of the breach of work discipline upon the employer and his activities (e.g. the damage inflicted might be an indicator).

The last ground for giving notice of termination, on the contrary, requires the breach of work discipline in the long term even if the breach of work discipline is less serious. The legal regulation requires the element of persistency and it also requires an employee be warned of the possibility of being given notice of termination in writing within the prescribed period of six months. The concept of "persistent less serious breaches of work discipline" is formulated in the decision-making practice of courts that held: "Persistent less serious breaches of work discipline appear if an employee commits at least three breaches of work discipline which do not amount to the intensity of a gross or serious breach of work duties with reasonable time relation among them. The persistent breaches of work discipline from the point of view of the time relation appear if one breach of work discipline relates to another one in such time interval that it results in a sequence of individual mutually related breaches of work discipline."<sup>18</sup>

The group of grounds consisting in breaching work discipline is the group which is most frequently formulated by the decision-making practice of courts. It is quite understandable because the general legal regulation cannot determine the breach of which duties is considered a serious breach of work discipline or an especially gross breach of work discipline or whether the repeated less serious breach of work discipline occurs. The examination of a particular breach of work discipline and its intensity always depend on particular circumstances of an individual case (the kind of work done, the extent of responsibility of an employee, the level of management, the extent of damage caused, etc.) and it depends on the court as an impartial authority to consider the matter. General courts gradually determined the limits in their decisions within which the breaches of work discipline and their examination should be carried out. First of all, the Supreme Court of the Czech Republic held that: "When examining the level of the intensity of the breach of work

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<sup>18</sup> Cf. the Judgment of the Supreme Court of the Czech Republic No.21 Cdo 1236/2002 of 17 February 2003, ASPI; and the Judgment of the Supreme Court of the Czech Republic No.6 Cdo 1/92 of 29 April 1992, in: Šbířka rozhodnutí NS, 1994, 6-7, p.202.



discipline, the court is not bound by the employer's assessment of an employee's particular behaviour according to the internal rules (or other internal regulations)."<sup>19</sup>

It is also very important to determine the range of duties the breach of which may be considered the breach of work discipline. The basic determination results from the judgment of the Constitutional Court of the Czech Republic that contributed to the determination of duties the breach of which is considered the breach of work discipline when it held: "Proving a serious breach of work discipline cannot be referred only to Sections 73 and 74 of the Labour Code when these provisions include only basic duties of employees or managerial staff in general and therefore, it is in the interests of the employer to make the rights and obligations, or responsibilities of employees towards one another within the organization more specific in internal regulations or instructions, e.g. in employment guidelines. On the contrary, the employer is exposed to a considerable danger that he will not be able to bear the burden of proof in the course of procedure related to the content of Section 46, para 1(f) of the Labour Code. The prerequisite for legal responsibility of an employee within his duties at work is proving his fault in breaching his duties at work. Particularly, the fault in relation to the duties at work of an employee or in respect of the legal interests of an employer might even result in, besides the abovementioned ground for giving notice of termination, criminal liability of an employee."<sup>20</sup> Making the range of duties the breach of which is considered the breach of work discipline more specific results from further decisions of courts.<sup>21</sup>

The decision-making practice of courts may also show the features for individual levels of the breach of work discipline.<sup>22</sup> However, the conclusion results from this practice that an employer may use, as a ground for the notice of termination, all breaches of work discipline that he thinks an employee had made. It is important for the decision of the court if the breaches of work discipline amount to the presupposed intensity under the law.<sup>23</sup> However, the courts also contributed to the negative determination of the concept of "breach of work discipline" when they reached the decisions dealing with what kind of behaviour, or under which circumstances, it cannot be considered the breach of work discipline.<sup>24</sup>

In connection with the ground for the notice of termination according to Section 46, para 1(f) of the Labour Code, it is necessary to draw the attention to the time limits for the application of this ground for the notice of termination. Pursuant to Section 46, paras 3 and 4,

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<sup>19</sup> Vide the Judgment of the Supreme Court of the Czech Republic No.21 Cdo 1228/99 of 19 January 2000, in: *Sbírka rozhodnutí NS*, 2001, 3, p.170.

<sup>20</sup> Vide the finding of the Constitutional Court of the Czech Republic No.II. ÚS 324/99 of 23 November 1999, in: *Sbírka nálezů a usnesení ÚS*, 16, p.385.

<sup>21</sup> "The breach of work discipline is not only the act based on fault in breaching the duty when performing work that belongs to the tasks of an employee according to an employment contract but also the act of fault in breaching the duty in performing other activity for an employer on his own initiative and the fault in the breach of the duty consisting in performing other work contrary to legal regulations, employment guidelines and other internal regulations of an organization or under the instruction of a superior employee." Vide the Judgment of the High Court in Prague No.6 Cz 25/92 of 30 June 1993, in: *Právní rozhledy*, 1995, 6, p.247.

<sup>22</sup> "The consumption of alcoholic beverages by an employee in the course of working hours at the place of work or outside the place of work may serve as the ground for terminating an employment relationship by notice in accordance with the provision of Section 46, para 1(f) of the Labour Code for a serious breach of work discipline." Vide the Judgment of the Regional Court in Košice No.22 Co 224/90 of 14 August 1990, in: *Sb.rozh.*, 1991, 9-10, p.441; furthermore e.g. "Gross negligence in treating a patient by a medical practitioner represents an especially serious breach of work discipline." Vide the Judgment of the Regional Court in Plzeň No.15 Co 233/95 of 29 May 1995, in: *Soudní judikatura*, 1998, 1, p.15.

<sup>23</sup> Vide the Judgment of the Supreme Court of the Czech Republic No.21 Cdo 2375/2004 of 26 July 2005, in: *Soudní judikatura*, 2005, 9, p.694.

<sup>24</sup> E.g. "The absence of an employee at work, indicated by an employer as unexcused without the consent of a particular trade union authority, cannot be considered the breach of work discipline by an employee," vide the Judgment of the High Court in Prague No.6 Cdo 131/93 of 21 December 1994, in: *Právní rozhledy*, 1996, 6, p.280.

an employer may, under these grounds give notice of termination only in the length of 2 months since the day when he was informed about the notice of termination, however, only within one year since the ground for the notice of termination appeared, at the latest. If an employee committed a breach of work discipline abroad, the notice of termination may be served on him within two months after his return from abroad. If the behaviour of an employee consisting in the breach of work discipline happens during the abovementioned two-month period subject to the examination of another authority, the notice of termination may be given within two months since the employer was informed about the result of this inquiry. The two-month period being examined does not run for the period of having filed the request for the prior approval by the state administration authority to give notice of termination until the final decision of a competent authority. The periods laid down in Section 46, para 3 have preclusive character (Section 261, para 4 of the Labour Code) which means that by passing the time the right of an employer ceases to exist to give notice of termination in a particular case using a particular ground. The shorter period of two months determines the time within which an employer can act actively, i.e. give notice of termination. On the contrary, the longer period of one-year establishes an objective limit within which a particular breach of work discipline may be considered. It is useful to become aware of the fact, when considering the characteristics of these periods, that the periods are of substantive character, which means that the unilateral act must be, within the prescribed period, delivered to the other party (the addressee), it is not sufficient if it is handed over to be delivered by post.

### **Offer of Another Suitable Job for the Employee**

Another substantive stipulation for the validity of notice of termination by an employer is the compliance with the requirement of Section 46, para 2 of the Labour Code. This substantive stipulation does not relate to the notice of termination which an employer gives on the grounds included in Section 46, para 1(f) of the Labour Code. In other cases (in most of them) an employer might give notice of termination if

- an employer does not have the possibility of employing an employee in the place agreed as a place for the performance of work, nor in the place of his residence even after the previous training
- an employee is not willing to be transferred to another work suitable for him and offered in the place agreed as the place for the performance of work, or in his place of residence, or to undergo previous training for such work.

The duty of an employer to offer an employee another job is not unlimited. This duty is determined both by the area and the fact. The area limits are given by the agreement on the place of the performance of work in an employment contract and the place of residence of an employee. In a number of cases this double restriction will correspond to one another (an employee works in the place of his residence in accordance with his contract of employment) but it may differ. However, an employer might offer jobs in the place of residence only in case he has got the premises there. This duty does not go beyond the scope of a particular employer, i.e. the employer does not have to offer the job to be performed for other employers.

The factual limits are expressed in wording “another suitable employment”. The suitability of the work offered should be considered as laid down in Section 37, para 5 of the Labour Code, i.e. when examining the suitability of work offered, it is necessary to consider the state of health and abilities of an employee, as well as the employee’s qualification. The

concept of “suitability of employment” has also been formulated by courts in their decisions.<sup>25</sup>

The offer of other work is connected even with preceding training. However, this concept has not been laid down under the law but in respect of the purpose of this provision, the preceding training can be considered only such training for the performance of work which is not, as far as the time is concerned or otherwise, especially from the point of view of costs (expenses) unreasonably costly, for which, as a rule, mere instruction, undergoing some special short-time courses, etc. is sufficient.

The duty required by the provision of Section 46, para 2 of the Labour Code is fulfilled if the employer may prove that he does not dispose of such work or even if he offered such work to an employee and the latter refused it. Compliance with the duty to offer suitable work has also been considered by courts that held: “It does not follow from the provision of Section 46, para 2 of the Labour Code that the employer is obliged to create new job opportunities for the employees to be able to make an offer in the sense of the cited provision; in order that the duty to make an offer might be complied with, the employer should need such particular work activity be factually performed.”<sup>26</sup> Therefore, the provision of Section 46, para 2 of the Labour Code may be understood as so-called duty of an employer to make an offer the fulfilment of which represents a substantive condition for the validity of notice of termination. Its meaning consists in the protection of an employment relationship in such a way that before the termination of an employment relationship, it prefers a unilateral termination of an employment relationship by notice only after complying with established conditions. The examination of the conditions laid down in this provision is always carried out according to the state in the time of the notice given.<sup>27</sup>

### **Prohibition of Giving Notice of Termination**

Another stipulation limiting the possibility of an employer to terminate an employment relationship by notice is the institute of so-called protective period connected with the prohibition of notice. The essence of this institute is the extended protection of an employee who found himself in a recognized difficult social situation or contrary to this, in a recognized social situation in need against the impacts connected with a unilateral termination of an employment relationship. The protection of an employee then consists in the expression of the prohibition of the notice of termination if the presupposed difficult social situation or the social situation in need occurs. If the notice of termination had been given and only after

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<sup>25</sup> “the suitable work cannot be referred to as the work which the employee is not able to perform in respect of his state of health, limited abilities or for the lack of qualification, if the qualification cannot be acquired only by previous training, thus for the performance of which the employee fails to comply with statutory provisions or the employer’s requirements,” Vide the Judgment of the Supreme Court of the Czech Republic No.21 Cdo 533/2003 of 12 August 2003, ASPI;

“Other work, in the meaning of the provision of Section 46, para 2 of the Labour Code, is, in respect of the employee’s state of health, also such work that cannot be performed by an employee in the period of notice but it is not a long term health incapacity to perform such work.” Vide the Judgment of the Supreme Court of the Czech republic No.21 Cdo 1307/2004 of 26 October 2004, in: Soudní judikatura, 2004, 11, p.889;

“If an employee performed the original work as full-time job, the employer is obliged to offer him, before giving notice of terminating the employment relationship, other suitable full-time job. If the employer does not dispose of such fulltime-job but has the possibility to provide an employee another suitable part-time job, he must also offer such part-time work opportunity for him.” Vide the Judgment of the Supreme Court of the Czech Republic No.21 Cdo 1573/2004 of 15 January 2005, in: Soudní judikatura, 2005, 4, p.277.

<sup>26</sup> Vide the Judgment of the Supreme Court of the Czech Republic No.21 Cdo 60/2002 of 5 December 2002, ASPI

<sup>27</sup> Cf. the Judgment of the Supreme Court of the Czech Republic No.21 Cdo 533/2003 of 12 August 2003, ASPI; and the Judgment of the Supreme Court of the Czech Republic No.2 Cdon 829/97 of 18 December 1997, in: Sbirka rozhodnutí NS, 1998, 8, p.420.

that some of these situations occurred, the protection of an employee may be seen in determining the period of notice.

Pursuant to Section 48 of the Labour Code, the prohibition of notice is laid down for the following situations:

- temporary work incapacity due to illness or injury unless the employee caused this incapacity intentionally or when drunk,
- proposal for treatment in a medical (health care) establishment or a spa until such treatment is finished; in the contraction of tuberculosis the protective period shall be extended for six months after the treatment having been finished at a health care establishment,
- calling up for duty in the armed forces since the delivery of the order (the issue of an announcement for common conscript order) until two weeks after the release from the service (the same applies for civilian service),
- long-term release for the performance of public office
- pregnancy of a female employee
- maternity leave of a female or a male employee
- temporary incapacity for night work if an employee works at night.

The ground serving for the prohibition of notice of termination operates objectively, i.e. the protection period with the prohibition of notice is applied irrespective of the fact whether the employer knows the ground for the protective period or not.

An absolute prohibition of notice would, in many cases, mean inadequate obligation for an employer and an objective impossibility to solve the situation. Therefore, the provision of Section 49 of the Labour Code mitigates the prohibition of giving notice in a protective period by determining the cases when, despite the existing protective period, the prohibition of notice is invalid. Restrictions on the prohibition of notice are connected with the grounds established, namely

- notice of termination due to organizational changes laid down in Section 46, para 1(a-b) of the Labour Code – notice of termination may be given in all cases of the protective period,
- notice of termination due to the immediate termination of an employment relationship (Section 46, para 1(f) of the Labour Code – notice of termination may be given in all case of the protective period with the exception of female employees on their maternity leave or male employees on their parental leave for the time a female employee would be on her maternity leave; if a female employee or a male employee were given notice of termination due to this reason before the beginning of the maternity (parental) leave in a way that the notice period would pass the maternity (parental) leave, the notice period should terminate at the same time as should the maternity (parental) leave,
- notice of termination for other breach of work discipline (Section 46, para 1(f) of the Labour Code – notice of termination may be given in all cases of the protective period with the exception of the pregnant female employees, female and male employees taking permanently care of a child in the age under three years.

In respect of the abovementioned restrictions in giving notice of termination we may say that none of the categories stated in Section 48, para 1 of the Labour Code is protected absolutely, the strongest protection is connected with pregnancy, maternity and child care until three years of age of a child but neither in these cases the protection is absolute.

### **Prior Consent of a Competent Body (Authority)**

Another substantive stipulation for giving notice of termination by an employer consists in the prior consent of a competent authority to give notice of termination for some groups of employees.

The prior consent of the Parliament's chamber chairman is a substantive condition for the validity of notice which an employer intends to give to an MP (Member of Parliament) who is released for a long term to perform an MP's Office. The requirement for the prior consent relates even to next 12-month period after the mandate of an MP ceased to exist. The requirement for the prior consent is established in Section 40 of Act No.236/1995 Coll. and is accompanied by the sanction of invalidity (Section 242, para 2 of the Labour Code).

Originally, the requirement for the prior consent of a local council (without the sanction of invalidity) was established even for the notice of termination which the employer intended to give to a member of a local council. This provision was included in Section 32, para 4 of the Act on Municipalities but it was abolished by the finding of the Constitutional Court of 17 September 1992.

### **Participation of a Trade Union Body (Authority) in Terminating an Employment Relationship by Notice**

The protection of employees against the notice of termination is secured even by means of the participation of trade unions in examining the necessity to terminate an employment relationship by an employer. The participation of trade unions in terminating an employment relationship by notice (as well as upon an immediate termination of an employment relationship – see hereinafter) is determined by the provision of Section 59 of the labour Code that establishes two particular forms resulting from the provision – discussion and a prior consent. As it even follows from the judgment of the High Court in Prague: “The provision of Section 59 of the Labour Code is of mandatory character and it does not allow any changes of its regulation for the participation of trade union bodies (authorities) in terminating an employment relationship either by an agreement between an employee and an employer or by a collective agreement.”<sup>28</sup> A trade union body competent for giving a prior consent is, in accordance with the decision-making practice of courts: “...the body that is, according to the statutes (charter, constitution) entitled to act in this employment relationship on behalf of a particular trade union; if it does not follow from the statutes, the prior consent of a particular trade union body cannot be successfully replaced (substituted) either by the consent of a superior body or by a central trade union body.”<sup>29</sup>

Trade unions bodies have the possibility to claim and defend the rights of employees in the form of so-called discussion in terminating an employment relationship. Pursuant to Section 59, para 1 an employer is obliged to discuss in advance all notices of termination he intends to give with a competent trade union body. However, the institute of discussion does not represent an absolute protection of employees because the failure of discussion or a negative result of discussion is not connected with the invalidity of a legal act being made (Section 242, para 2 of the Labour Code). The discussion about notice of termination with a competent trade union body cannot be therefore considered a substantive condition for the validity of notice of termination by an employer.

A more considerable protection by means of competent trade union bodies is provided for the employees who are the members of a trade union body (authority) and entitled to make co-decisions together with an employer, particularly during the term being in office and

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<sup>28</sup> Vide the Judgment of the High Court in Prague No.6 Cdo 45/94 of 20 June 1995, in: *Právní rozhledy*, 1997, 3, p.139.

<sup>29</sup> Vide the Judgment of the Supreme Court of the Czech Republic No.21 Cdo 1599/2001 of 6 June 2002, in: *Soudní judikatura*, 2002, 8, p.609.

during the period of one year after their term of office expired. This protection of trade union officials results from international conventions<sup>30</sup> and aims at the absence of sanctions for those trade union officials claiming the rights of trade unionists. The protection of trade union officials is ensured by means of an institute of a prior consent of a competent trade union body in respect of notice of termination for an employee – trade union official.

The regulation for providing the prior consent may rely on the provision of Section 59, paras 2-4 of the Labour Code. It results from these provisions that if a trade union body intends to defend its trade union official effectively, it must act actively. The prior consent being given according to Section 52, para 2 include the unrebuttable assumption in case where the competent trade union body does not refuse to give its prior consent in writing within 15 days of the day when the employer asked for it. The abovementioned provisions may serve for drawing the conclusion that the prior consent of a competent trade union body is given if

- a trade union body expressly gives the consent or
- a trade union is passive and within 15 days of the day when the employer asked for the consent, it does not refuse it.

Thus, if a trade union body does not intend to give the consent for notice of termination, it must, within 15 days since the request had been filed, inform the employer about the negative opinion.

However, time restrictions are established for the application of the prior consent by an employer. The time restrictions should serve for the inappropriate misuse of the consent given by the employer. The employer may act upon the prior consent given only within a two-month period after the day it was given (Section 59, para 3 of the Labour Code).

It is necessary for complying with a substantive condition in order that the consent required have the character of the prior consent, i.e. be given prior the employer's expression of will. The establishment of time for the determination when the consent is prior is connected with the determination when, in fact, the employer expresses his will. The opinions in this area are being developed but recent opinions refer to the prior consent as the consent which is given prior the necessary expression of will by the manager who is entitled to make this legal act.

A prior consent of a competent trade union body is a condition of substantive character for the validity of notice otherwise, without the prior consent, the notice of termination is null and void (Section 242, para 2 of the Labour Code). The nullity of notice of termination for failure to give the prior consent may be, pursuant to Section 59, para 4 of the labour Code, under certain circumstances, modified by the decision of court. if, however, other conditions for giving notice of termination are met and the court in a dispute pursuant to Section 64 may conclude that the employer may not justly be expected to employ such an employee further. If the court reaches this decision and as mentioned above, other conditions for giving notice of termination are met, the notice of termination is valid even without the prior consent of the competent trade union body. Even in this respect, the limits for considering to what extent the employer may be justly required to employ the employee further are created by the decisions of courts.<sup>31</sup>

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<sup>30</sup> ILO Convention No.135 of 1971

<sup>31</sup> "Considering the question if the employer may be justly required to employ the employee as laid down in Section 59, para 2 of the Labour Code,...the particular circumstances are decisive.....with regard to what impacts on performing the function of an employer on one hand and the position of an employee (e.g. in respect of his personal, family and property situation) on the other, further employment would have in the first case or termination of an employment relationship in the other case." Vide the Judgment of the regional Court in Ostrava No.16 Co 402/96 of 19 November 1996, in: *Právní rozhledy*, 1997, 3, p.147.

The analysis of the prior consent of a competent trade union body is the last substantive condition for the validity of notice of termination given by an employer. However, we have not mentioned all the obligations of an employer relating to the notice of termination, yet.

#### **2.2.4 Obligation to Assist in Seeking Other Suitable Employment**

Pursuant to Section 47 of the Labour Code an employer is imposed another obligation the compliance with which should protect employees in unfavourable situations multiplied by the termination of an employment relationship. The obligations imposed by Section 47 do not have the character of substantive conditions for the validity of notice of termination because the performance of these duties is expected subsequently in a situation when an employee was given notice of termination and the time of the performance falls within the notice period, or results in the extension of a notice period.<sup>32</sup>

The provision especially emphasises the obligation of an employer to assist an employee effectively in obtaining other suitable employment (Section 47, para 1 of the Labour Code). Other suitable employment can be, in any case, understood as the employment apart from the employer himself. This obligation cannot be confused with the duty to offer another suitable job in accordance with Section 46, para 2 of the Labour Code.

An employer has this duty towards an employee who was given notice of termination on the grounds laid down in Section 46, para 1(a-d) of the Labour Code. To comply with this duty, the employer is expected to cooperate with the competent state administrative authority but he may also use other ways, e.g. personal links with other employers. To comply with this duty, it is not necessary for the employer to find the employment for the employee, it is quite sufficient if the employer takes measures to assist the employee (e.g. finding the contacts, negotiation with a Labour Office, etc.). Performing this duty does not have any influence upon the running of a notice period either. The employment relationship terminates upon the expiry of a notice period irrespective of the employer's assistance resulting in obtaining another job or not.

In accordance with the provision of Section 47, para 3 of the Labour Code the employer is not obliged to give active assistance to an employee in obtaining another suitable job if the employee is not willing to start working in another suitable job which the employer had offered him before he gave him notice of termination in accordance with Section 46, para 2 of the Labour Code. The employer ceases to be under this obligation if, for no good reason, the employee refuses another suitable job which he could have taken up.

The employer's obligations related to the notice of termination do not only include the assistance in seeking another job. In respect to some categories of employees and in connection with the grounds applied, an employer even has the obligation to ensure another suitable job. An employer is obliged to ensure another suitable job in case notice of termination was given on the grounds established in Section 46, para 1(c) of the Labour Code to

- a single female or a single male employee who is permanently bringing up a child under the age of 15 years,
- a disabled employee who is not a recipient of a pension.

The employer is also obliged to ensure another suitable job in case the notice was given in accordance with Section 46, para 1(d) of the Labour Code because

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<sup>32</sup> "The circumstance if the employer complied with the obligation to ensure... another suitable employment, or, if the employee refused, without good reasons, another suitable employment he might have started, does not influence the validity of notice of termination given to the employee." Vide the Judgment of the High Court in Prague No.6 Cdo 39/94 of 29 July 1994, in: Soudní rozhledy, 1995, 3, p.65.

- an employee is no longer permitted to continue performance of his present work due to the threat of an occupational disease,
- the maximum level of exposure permitted by a ruling of the competent public health protection authority was reached.

The running of a notice period is related to complying with the obligation to ensure another suitable job. The notice period does not end until the employer complies with the obligation, unless the employer agrees otherwise with the employee.

Pursuant to the provision of Section 47, para 3 of the Labour Code the employer is not obliged to ensure another suitable job if the employee had not been willing to start working in another suitable job which the employer had offered him before he gave him notice of termination in accordance with Section 46, para 2 of the Labour Code. The employer ceases to be under this obligation if, for no good reason, the employee refuses another suitable job which he could have taken up.

### **2.2.5 Collective Redundancies (Large-Scale Dismissals)**

The institute of collective redundancies was incorporated into the Labour Code by Act No.155/2000 Coll. as the European Council's Directive No.75/129/EEC of 17 February 1975 on harmonizing legal regulations of the Member States relating to collective redundancies (in the wording of the Council's Directive No.92/56/EEC). This institute does not constitute a new legal fact that would result in terminating an employment relationship, it has only the character of the course of procedure for an employer in case he intends, under the grounds established in Section 46, para 1(a-c) of the Labour Code, to dismiss a lot of employees within a short-time period.

Large scale of redundancies is determined by the number of employees being made redundant depending on the number of employees of an employer (Section 52, para 1 of the Labour Code), particularly

- 10 employees in companies employing 20 to 100 employees,
- 10% of the employees in companies employing 101 to 300 employees,
- 30 employees in companies employing more than 300 employees.

Such dismissals are made in the period of 30 calendar days. If the employment relationships of at least five employees are terminated by notice under the above mentioned grounds, the number of employees being given notice of termination in this period is included in the sum total of the employees whose employment relationships were terminated upon agreement in order that it may be considered if Section 52 may be applied. This provision should obviously prevent an employer to avoid the consequences of collective redundancies if he terminates the employment relationships upon agreement.

Before an employer terminates the employment relationships (gives notices of termination to individual employees), he has the obligation to inform and consult (Section 52, para 2 of the Labour Code). This obligation is connected with the rights of employees to be informed and consulted as laid down in Section 18 of the Labour Code. The subject of the obligation to inform and consult for the purpose of agreement comprises the following issues:

- measures aiming at preventing or restricting collective redundancies,
- mitigating unfavourable consequences upon the employees,
- possibility of transferring the employees to the employer's other places of work in suitable jobs.



These obligations are performed by an employer in relation to the competent trade union body or the works council. If these bodies do not function in a company, the employer is obliged to perform the information and consultation duties in relation to every employee affected by collective redundancy (Section 52, para 5 of the Labour Code).

At the same time, i.e. before an employer starts dismissing the employees, he is obliged to notify the competent Labour Office (Section 52, para 3 of the Labour Code). The subject of the obligation to inform the competent Labour Office includes the following issues:

- measures aiming at preventing or restricting collective redundancies, especially the reasons for such measures,
- the total number of employees,
- the number and composition of employees to be affected by such arrangements,
- the period within which the employees are to be made redundant,
- the criteria proposed for selecting the employees to be made redundant,
- the commencement of consultations (negotiations) with the competent trade union body or works council.

The employer is obliged to deliver a copy of the written report to the competent trade union body (works council).

After the decision to terminate the employment relationships (i.e. after the decision about dismissals), the employer is obliged to deliver a written report about the decision and the result of consultation to the competent Labour Office (works council) (Section 52, para 4). The subject of the report must include, besides the information about the decision reached, information about the total number of employees, the number and composition of employees who are to be affected by collective redundancies. The copy of this report must again be delivered by the employer to the competent trade union body (work council) that may have the right to comment independently on this report. The comments should also be sent to the Labour Office. If these bodies do not function in a company, the employer is obliged to perform this duty in relation to every employee affected by collective redundancy. At the same time, the employer is obliged to inform the employees to be made redundant about the day when the written report was delivered to the Labour Office (Section 52, para 6 of the Labour Code).

The delivery of the written report to the Labour Office in accordance with Section 52, para 4 of the Labour Code is also connected with the possibility of extending an employment relationship (extending a notice period). An employment relationship of an employee, who is affected by a large-scale redundancy, shall be terminated no earlier than 30 days after the day when the employer's written report is delivered to the competent Labour Office – Section 52, para 6 of the Labour Code – unless the employee concerned declares that he does not insist on observance of such time limit. This shall not apply if a bankruptcy order has been adjudged against the employer's enterprise, or if composition proceedings have been affirmed.

## **2.3 INSTANT TERMINATION OF EMPLOYMENT**

Instant termination of employment is an extraordinary way of terminating the employment. The extraordinary nature of this way consists primarily in the fact that its legal effects arise instantly, which is a substantial and unexpected intervention into the original legal status of the employed person against whom such a legal act is directed. Being really an extraordinary way of termination the employment it is strictly regulated and the legal regulation stipulates very restricting substantive preconditions for instant termination of employment.

An employment may be terminated instantly by both persons, i.e. the employer and the employee.

Instant termination of employment is a unilateral legal act on the basis of which the employment is terminated regardless of the will of the person against whom the instant termination is directed.

Employment is terminated immediately on the basis of instant termination and legal effects are linked to service of an act of will, i.e. they are not postponed until a certain period expires as it is with notice. These effects cannot be changed or excluded by an act of will of the participants of the employment relationship.<sup>33</sup> It is a very harsh intervention into the employment relationship and the Labor Code therefore stipulates a number of preconditions that must be met before such a way of terminating employment can be used.

When dealing with the notice of termination of employment we mentioned the so-called revocation of (withdrawal) of the notice. In practice, there appears the question whether the instant termination of employment may also be revoked (withdrawn). Unlike the notice, where there exists a period between the service of the notice and the termination of employment in which the employment relationship still continues and in which it may be revoked, in the case of instant termination of employment such a possibility does not exist. Employment relationship ends immediately by instant termination of employment, i.e. at the moment of its service and there is no space for its revocation. Any act made after the termination of employment would not mean the renewal of the original employment relationship but the formation of a new employment relationship. The judicature gradually created a certain space because from the ruling that “the Labor Code does not make it possible for the employer after having served the written notice of instant termination of employment on the employee to withdraw this legal act of his in any way or to achieve its cancelling by another unilateral act”<sup>34</sup> it came to the conclusion that: “An instant termination of employment which has been served on the other participant cannot be after that revoked (cancelled) by the participant who made it. It only loses its legal effects consisting in termination of employment on the basis of a final and conclusive decision of the court that ruled that the instant termination of employment was not valid, or on the basis of an agreement about claims at dispute made within the court proceedings (on determining nullity of the instant termination of employment) in which the parties agreed that their employment relationship continued to exist after the service of instant termination of employment and that it would continue to exist”<sup>35</sup>.

Substantive preconditions of validity of instant termination of employment may be divided into two groups, namely:

- general substantive preconditions set for instant termination of employment regardless of whether it is made by the employee or the employer
- special substantive preconditions which are specially set for instant termination of employment from the part of the employer and for instant termination of employment from the part of the employee.

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<sup>33</sup> “Effects of the terminating act made in conformity with Section 55, Labor Code, arise by operation of law on the day when the written declaration of instant termination of employment was served on the other participant. Any other time specification mentioned in the terminating act cannot therefore change these legal effects.” See, the ruling of the Supreme Court, Czech Republic, file 3 Cz 4/71 of 19 March 1971, in Collection of rulings of SC, 1972, No 1, p. 37.

<sup>34</sup> See the ruling of the Regional Court in Hradec Králové, file 23 Co 269/96 of 24 March 1998, in Soudní rozhledy, 1998, No 12, p. 326.

<sup>35</sup> See the ruling of the Supreme Court CR, file 2 Cdon 1155/96 of 29 October 1997, in Soudní judikatura, 1997, No 14, p. 329.

### **2.3.1 General substantive preconditions of instant termination of employment**

First, instant termination must be made by the person who has legal capacity to do such a legal act. Employment may be terminated instantly by the employer as well as by the employee. The legal act of the employer is directed against his employee. For the legal act of the employer to be valid there are no preconditions on the part of the employee against whom such an act is directed. In spite of that it is suitable to emphasize one peculiarity in this context. Instant termination of employment may also be directed against the employee who is minor. If the employer instantly terminates an employment relationship with a minor employee he is obliged to notify the legal representative of the minor about that (Section 164, Para 2, Labor Code). Even if meeting the above mentioned obligation is not set as a substantive precondition of instant termination validity and such an instant termination that the legal representative has not been informed about will be valid, the relationship with the legal representative is designed to help solve problems that appeared on the part of the minor employee.

#### **Grounds for instant termination**

Grounds for instant termination are set not only for the legal act done by the employer but also for the legal act done by the employee (unlike the notice which need not include any reason on the part of the employee). Grounds for instant termination consist in that both the employer and the employee may instantly terminate the employment relationship only for the reason which is listed in the Labor Code, such a reason must be given in the written declaration of will and must be defined in such a way that it cannot be mistaken for another reason. The written declaration of will must include the reason for instant termination, this reason must be precisely defined so that it could not be mistaken and it cannot be changed after that. For not meeting these substantive preconditions there is also a sanction of nullity of legal act (Section 55, Labor Code).<sup>36</sup> Grounds for instant termination of employment from the part of the employer are set in Section 53, Para 1, Labor Code, grounds for instant termination of employment from the part of the employee are set in Section 54, Para 1, Labor Code. The legal regulation of grounds for instant termination of employment included in the mentioned provisions of the Labor Code has a cogent character, i.e. the parties cannot exclude or change it by agreement.

#### **Formal requirement of instant termination**

Instant termination of employment from the part of the employer as well as from the part of the employee must have all requirements of a legal act (Section 242, Para 1, Labor Code). The will of the persons leading to the ending of the employment relationship by instant termination must be free and serious and the declaration of will must be certain and understandable. For the interpretation of this legal act there also applies the interpretative rule set in Section 240, Para 3, Labor Code (dealt with more deeply in connection with notice of employment termination). It also has to meet all other formal requirements set by the law. To be valid, instant termination of employments must be writing, which is sanctioned by nullity (Section 55, Labor Code). Not meeting the requirement of the written form where it is expressly prescribed results in nullity of the respective legal act (Section 242, Para 2, Labor Code), which is the case of instant termination of employment.

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<sup>36</sup> “The written instant termination of employment must not only give the reason in such a way that it should be clear which reason listed in Section 53, Para 1, Labor Code, has been applied, but also in such a way that it should be undisputed what peculiar act of the employee is viewed as such a reason and so that it should be ensured that the applied reason cannot be changed subsequently.” See the ruling of the Supreme Court, CR, file 2 Cdon 198/96 of 21 November 1996, in Soudní judikatura, 1998, No 4, p. 76.

Regarding the fact that instant termination of employment is a unilateral addressed legal act one more substantive precondition is set, namely the service of the written declaration of will on the other party of the employment relationship (Section 55, Labor Code). Not meeting this precondition also results in nullity of the legal act. For serving instant termination of employment from the part of the employer on the employee there applies the same mode of service regulated by Section 266a, Labor Code, as in the case of service of notice of employment termination. The moment of service of the legal act is extraordinarily important in the case of instant termination of employment because it is only by this moment that the legal act becomes perfect, i.e. valid, but this moment is also closely linked with legal effects. Employment relationship ends immediately, i.e. by the moment of service of the legal act on the addressee.

### **Time limitation of instant termination**

Regarding the fact that instant termination of employment is an extraordinary intervention into the legal status of the employee as well as the employer together with the long period expired between the arising of the reason and its application, there must be a time limitation of the possibility to use instant termination of employment.

Pursuant to Section 53, Para 2, Labor Code, the employer may terminate employment instantly only within one month starting from the day when he learnt the reason for instant termination, but within one year at the latest from the day when the reason accrued. If the employee committed an especially gross breach of work discipline abroad employment relationship may be terminated instantly within one month after his return home. The one-year period holds in such a case, too. If during the one-month period the conduct of the employee, which has been the reason for instant termination of employment, becomes the subject of investigation by another authority it is possible to terminate employment instantly within one more month after the employer has learnt the result of such an investigation.

The same time limitation is established in Section 54, Para 2, Labor Code, for instant termination of employment from the part of the employee.

When examining this precondition it is also necessary to take into consideration that periods established in Section 53, Para 2, Labor Code, and Section 54, Para 2, Labor Code, are preclusive periods, which means that by futile expiration of such a period the very right of the employer or the employee to terminate employment instantly is ended in a concrete case while using a concrete reason. At the same time, it is necessary to bear in mind that the established periods are substantive periods, which means that the whole legal act must be realized within the given period. We have already mentioned above that for instant termination to be valid its service on the addressee is also necessary. In connection with periods it should be noted that the required service must be realized within the established one-month period which, however, cannot exceed the objectively established period of one year.

### **2.3.2 Grounds for instant termination of employment from the part of the employer**

In addition to general substantive preconditions referred to above some other special substantive preconditions must be met by the employer for instant termination of employment.

The employer may terminate employment instantly only if any of the reasons established in Section 53, Para 1, Labor Code, arise:

**a) the employee has been lawfully and unconditionally sentenced for an intentional crime to prison for a period exceeding one year – Section 53, Para 1 a), Labor Code, the first part of the sentence.**

When analyzing this provision several various aspects come to the fore. First, the employee must have been lawfully sentenced for an intentional crime and the sentence of unconditional imprisonment exceeding one year must have been imposed. Therefore it is not possible to terminate employment relationship with an employee instantly for a crime committed by negligence even if an unconditional sentence was imposed on him and even if the sentence considerably exceeds the period of one year. Similarly, employment relationship cannot be terminated instantly if the employee has committed an intentional crime but a conditional sentence of imprisonment or an unconditional sentence for a term shorter than one year has been imposed on him. Moreover, for instant termination of employment another precondition must be met, namely, that the employee has been sentenced lawfully, i.e. that the sentencing judgment has come into force. Thus employment relationship cannot be terminated instantly if the employee is only suspected of having committed an intentional crime or if the judgment was declared but it has not come into force yet. If the above mentioned preconditions are met, the employer may terminate employment relationship instantly regardless of whether the crime for which the employee has been sentenced is or is not connected with job performance by the worker.

**b) the employee has been lawfully and unconditionally sentenced for an intentional crime committed, while performing his job or in a direct consequence with it, to prison term exceeding 6 months at least – Section 53, Para 1 a), Labor Code, the second part of the sentence.**

For characterizing this reason the above mentioned analysis may be used partly, too. Again, the sentencing judgment must have come into force and it must be an intentional crime (a negligent crime is not sufficient). Unlike the previous reason it is necessary for the crime to be committed in relation with job performance by the employee (or there must be a direct connection with job performance). Another difference is also a shorter term of unconditional imprisonment which must be six months at least.

**c) the employee breached work discipline quite seriously – Section 53, Para 1 b), Labor Code**

There have always been problems with an interpretation of the concept of breaching work discipline quite seriously. The concept itself is not defined in the Labor Code and cannot be defined, either. When considering this reason one has always to judge the particular situation in the workplace and has to take into consideration the consequences that such a breach of work discipline caused or could cause. It is for sure that breach of work discipline as a reason for instant termination of employment must be very serious. As with notice of employment termination due to breaching work discipline the court practice plays the principal role. The decisions mentioned in connection with notice of employment termination may be used here, too. A good characterization of this reason for instant termination of employment as well as the importance of court practice for considering it may also be found in the following ruling of the Constitutional court of the Czech Republic: “Only breaching work discipline quite seriously is the reason according to Section 53, Para 1 b), Labor Code, for instant termination of employment relationship. In view of the character of the cited provision, which is one of the legal rules with uncertain hypothesis, it is always duty of the respective court to consider whether the employee’s breaching of work discipline was based on his fault, and if the conclusion is positive the court must decide what degree of breach of work discipline it was. In its consideration the court is not restricted by any particular viewpoints or limits but it only takes into consideration specific features of the given matter and also the valid judicature of general courts. According to the existing court practice breaching work discipline quite seriously includes among others long-term absence of the

employee from the workplace, theft of property of a greater extent, physical attack, drinking alcoholic beverages, etc.”<sup>37</sup>

### **Prohibition of instant termination of employment**

The employer cannot always terminate employment even if all the above mentioned substantive preconditions are met. It is barred by the provision of Section 53, Para 3, Labor Code, which prohibits instant termination of employment for certain groups of workers. The employer cannot instantly terminate employment relationship with:

- a pregnant worker
- a female or male worker who have in permanent care a child younger than 3 years.

However, in such cases the Labor Code recognizes untenability of employment relationship in relation with seriousness of reasons that enable instant termination of employment relationship. The Labor Code allows for the reason of instant termination (Section 53, Para 1, Labor Code) to be used as a reason for giving notice and the notice to be given regardless of the fact the employee belongs to the group of workers where instant termination is prohibited. The only exception where protection is absolute is woman on maternity leave (Section 157, Para 1, Labor Code – maternity leave) or man on parental leave for the period in which the woman is entitled to be on maternity leave (Section 158 in dependency on Section 157, Para 1, Labor Code). Employment relationship of these employees cannot be terminated instantly and they cannot be given notice for a reason for instant termination, either.

### **Participation of a trade union body in instant termination of employment**

Instant termination of employment (as well as notice) must be discussed with the respective trade union body. The discussion with a trade union is not, though, construed as a substantive precondition of validity of instant termination of employment (Section 242, Para 2, Labor Code). The only exception is instant termination of employment of a member of the respective trade union body who is authorized to co-decide with the employer, and it occurs in his term of office or within one year after termination of his term of office. In such a case it is required not only a discussion but also the so-called preceding consent of the respective trade union body, which is a substantive precondition of validity of instant termination (Section 59, Para 4, Labor Code). Without the preceding consent instant termination of employment is not valid. For the characterization of the preceding consent there applies the same information as that mentioned above in relation to notice of employment termination.

### **2.3.3 Reasons for instant termination of employment relationship from the part of the employee**

Instant termination of employment from the part of the employee is also a motivated and causal legal act. This characterization means that the employee may instantly terminate employment if there is a reason stipulated in the Labor Code and the reason must be given a substantiated in his declaration of will.

Unlike the employer, who has at his disposal three reasons for instant termination of employment, the employee has at his disposal only two reasons. Pursuant to Section 54, Para 1, Labor Code, the employee is entitled to terminate employment instantly if:

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<sup>37</sup> See the ruling of the Constitutional Court, Czech Republic, file IV. US 367/03 of 21 April 2004, in Sbírka nálezů a usnesení US, volume 33, p. 465.

**a) he is not able, according to a doctor's opinion, to perform his job without a serious endangering of his health and the employer has not transferred him to another job suitable for him within 15 days since the submitting of the opinion – Section 54, Para 1 a), Labor Code.**

For instant termination it is not sufficient to have only the doctor's opinion, the employee's state of health and unsuitability of the existing job must be determined in a qualified manner.<sup>38</sup>

The above mentioned provision is actually an amendment (determining a period with sanction) to the provision of Section 37, Para 1 a), Labor Code, which positively establishes the duty of the employer to transfer the employee to another job if he is not able to perform the existing job due to his long-term bad state of health. Section 37 does not establish a sanction for not fulfilling the above mentioned duty or the period within which the employer must fulfill it. These drawbacks are indirectly remedied for by Section 54, Para 1 a), Labor Code, which stipulates the period within which the employer is supposed to transfer the employee to another job after submitting the doctor's opinion (15 days) and establishes a sanction for not fulfilling this duty, which is instant termination of employment.

**b) the employer has not paid him his wage or reimbursement of wage within 15 days after the day of maturity – Section 54, Para 1b), Labor Code**

To explain this reason it is necessary to define first of all the concept of maturity of wage. Wage (in the general sense, i.e. wage or salary) is payable in arrears for monthly periods in the following calendar period at the latest (Section 10, Act No 1/1992 Coll., Section 16, Act No 143/1992 Coll.). The 15-day period stipulated in Section 54, Para 1 b), Labor Code, begins to run only after the expiry of maturity of wage. The reason for instant termination of employment arises after the fruitless expiry of this period (not earlier). Here, too, instant termination of employment is a sanction against the employer for not fulfilling his duty to pay wage at the specified amount and at the specified time. Instant termination of employment does not have, of course, any impact on continuance of the wage claim retrievable by the employee in generally regulated manners.

### **Satisfaction of the employee**

Instant termination of employment from the part of the employee is linked with another entitlement of the employee, namely, the entitlement to reimbursement of wage (salary). Pursuant to Section 54, Para 3, Labor Code, the employee who has instantly terminated employment is entitled to reimbursement of wage (salary) amounting to the average monthly earning for the period corresponding to the general length of notice (i.e. two months). However, the mentioned entitlement does not affect the moment of employment termination. Even with instant termination of employment by the employee the employment relationship is terminated directly by serving the written declaration of will of the employee on the employer. The duty to provide a reimbursement for the period when the employee will not be in the employment relationship has the character of a certain sanction against the employer for breaching duties imposed on him by labor law provisions. Naturally, the entitlement to the reimbursement of the wage (salary) for the period corresponding to the length of notice does not belong to the employee if the court, at the proposal of the employer, rules that the employee's instant employment termination is invalid even if the employer did not insist on continuing the employment relationship. The claim for reimbursement of wage for the length of notice may be ascertained for three years at the latest from the day on which

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<sup>38</sup> For judging the long-term incapacity of the employee to perform his job it is possible to use adequately characterizations and decisions of courts mentioned with notice of employment termination pursuant to Section 46, Para 1 d), Labor Code.

employment relationship was terminated instantly (Section 263, Labor Code), otherwise the claim is barred by statutes of limitation.

## **2.4. TERMINATION OF EMPLOYMENT RELATIONSHIP IN PROBATIONARY PERIOD**

Termination of employment relationship in probationary period is among the special manners of termination of employment relationship. The purpose of probationary period is to enable both the parties to the employment relationship to test the agreed employment relationship whether it fulfils their ideas of work activity, in particular, if the employee finds the agreed kind of work and other working conditions satisfactory and if the employer finds the respective employee to fulfill his ideas of the way of performance of work. A probationary period is a possible part of the contract of employment because its existence depends on the agreeing will of both parties of the employment relationship. The maximum length of a probationary period is three months however it can be agreed shorter but an additional extension is not permitted. The agreement on a probationary period must be in written form. If one of the parties to the employment relationship comes to the conclusion that the agreed employment relationship does not suit him, he has a very simple possibility to terminate this employment relationship.

Unlike other unilateral legal acts aimed at severing employment relationship which are strictly regulated as far as their application is concerned, termination of employment relationship in probationary period is a simple manner without strict formal requirements. Protection of stability of employment relationship is substantially lowered here so that the purpose of probationary period could be fulfilled. It is clear that the free termination of employment relationship is linked with a very strong degree of uncertainty of the parties to the employment relationship as for whether their employment relationship will be preserved. So that this uncertainty concerning existence of employment relationship could decrease even termination of employment relationship in probationary period must meet certain requirements, especially the time requirements.

Termination of employment relationship in probationary period is among the manners of severance of employment relationship, i.e. among such manners when employment relationship ends on the basis of demonstration of will of some of the persons involved in the legal relationship which is to be severed. Termination of employment relationship in probationary period is a unilateral legal act which may be made by the employee or the employer. The employment relationship ends due to this legal act on the basis of demonstration of will of only one person. For the legal effects to arise no affirmative demonstration of will of the other person to employment relationship is necessary.

The persons authorized to make this legal act are the employee and the employer. For the position of the persons there applies everything what was mentioned in connection with notice or instant termination of employment relationship.

### **2.4.1 Formal requirements of termination of employment relationship in probationary period**

Termination of employment relationship in probationary period may be labeled as a formal legal act but without sanction of invalidity for failing to comply with the required form. Pursuant to Section 58, Para 1, Labor Code, a written form is required for termination of employment relationship in probationary period. Applying the provision of Section 242, Para 2, Labor Code, we have to come to conclusion that failing to comply with the required form does not mean invalidity of this legal act because this legal consequence is not expressly



stated in Section 58, Labor Code. In other words, termination of employment relationship in probationary period made orally will be valid, too, but the parties to the employment relationship may get into failure of evidence in the case that the termination of employment relationship in probationary period will be the subject-matter of a court dispute.

The necessary formal element of termination of employment relationship in probationary period is the service of demonstration of will on the other party to the employment relationship. The necessity of the service results from the provision of Section 58, Para 2, Labor Code, and it may also be substantiated by the character of this legal act. Termination of employment relationship in probationary period is a unilateral and addressed legal act, which means that the legal act becomes perfect only at the moment of its being serviced on the other party to the employment relationship and at that moment the person is also bound by his legal act.

#### **2.4.2 Substantive preconditions of termination of employment relationship in probationary period**

The requirements of the legal act of termination of employment relationship in probationary period are defined in the Labor Code only fragmentarily. From Section 58 we may induce that termination of employment relationship in probationary period must include demonstration of will of the person to sever his employment relationship in the probationary period.

The legal regulation does not establish unequivocally that the legal act must also state the day of the termination of employment relationship in probationary period. From Section 58, Para 2, it may be induced, in our opinion, that the day of the termination of employment relationship should be specified in the legal act. This conclusion may be induced from the wording that the written notice of termination of employment relationship is to be served on the other party at least three days before the day when the employment relationship is to be ended. If the terminating demonstration of will does not state the day of termination of employment relationship it is ended on the day of the service (notification) of termination of employment relationship to the other party.<sup>39</sup> If as the day of termination of employment relationship was stated the day following expiry of the probationary period then the employment relationship ends on the last day of the probationary period.<sup>40</sup>

The substantive precondition of validity of termination of employment relationship in probationary period is not the reason that leads a party to that legal act. Pursuant to Section 58, Para 1, this legal act may be made due to any reason or without stating any reason. It follows, of course, from the cited provision that the reason may be expressly stated in the legal act. On the other hand, lack of this reason does not cause invalidity of termination of employment relationship in probationary period. Stating a reason for termination of employment relationship in probationary period is not then a substantive precondition of validity of such a legal act.

Section 58, Para 2, also stipulates the time-limit for serving the legal act on the other party to the employment relationship. Termination of employment relationship is to be served on the other party at least 3 days before the day when the employment relationship is to be ended. In view of the wording of this period in Section 58, Para 2, it is necessary to induce that the time-limit is only a matter of order and failure to keep that time-limit does not result in invalidity of the legal act. The stipulated time-limit cannot be then regarded as a

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<sup>39</sup> A similar conclusion follows from rulings of general courts. See, for example, the ruling of Superior Court in Prague, file 6 Cdo 11/94 of 28 April 1995, in *Právní rozhledy*, Volume 1995, Issue 10, p. 415.

<sup>40</sup> This conclusion may also be induced from court rulings. See, for example, the ruling of Superior Court in Prague, file 6 Cdo 11/94 of 28 April 1995, in *Právní rozhledy*, Volume 1995, Issue 10, p. 415.

substantive legal precondition of validity of termination of employment relationship in probationary period.

However, for termination of employment relationship in probationary period there is one important limitation. This legal act may be made only during the duly agreed probationary period. This conclusion unequivocally results from the respective legal regulation and is also confirmed by the current decision practice of courts that repeatedly stated: “A legal act aimed at termination of employment relationship in probationary period and made after expiry of the agreed (or prolonged, pursuant to Section 31, Para 2, Labor Code) probationary period is invalid.”<sup>41</sup> Pursuant to Section 31, Para 1, Labor Code, a probationary period can be agreed for 3 months at the latest if a shorter probationary period is not agreed. The agreed shorter probationary period cannot be subsequently prolonged. The termination of employment relationship in probationary period may be made only during that probationary period that was agreed in the particular contract of employment. When defining the time framework for implementation of the legal act it is necessary to bear in mind that termination of employment relationship in probationary period is a unilateral addressed legal act, i.e. that it must be served in the probationary period on the other party to the employment relationship. However, it is termination of employment relationship in probationary period so legal effects of this legal act must also arise in the agreed probationary period.<sup>42</sup> This note is related especially to the fact the written notice is to be served at least three days before the day when the termination of employment relationship is to occur.

For defining the time framework of termination of employment relationship in probationary period there is also an important provision in Section 31, Para 2, Labor Code, which stipulates that the period of obstacles at work (for example, illness, taking care of a child, etc.) due to which the employee cannot perform his work during the probationary period is included in the probationary period at the extent of 10 working days at the latest. From the above mentioned provision it follows that if the period of obstacles at work exceeds 10 working days the probationary period is prolonged by so many days by which the total period of obstacles at work exceeded this limit. At the same time, it means that a prolongation of the period during which it is possible to terminate employment relationship in probationary period. Employment relationship may be terminated anytime during the agreed probationary period including the prolongation of probationary period by the period missed due to obstacles at work exceeding 10 working days, but on the last day of the agreed (or prolonged due to obstacles at work) probationary period at the latest.

Obstacles at work that do not exceed 10 working days in total during probationary period do not affect the course of probationary period or the possibility of termination of employment relationship in probationary period.

In relation to obstacles within probationary period there appeared in practice a question whether in probationary period an employment relationship may be terminated even in the course of duration of an obstacle. The standpoint saying that in the course of duration of obstacles at work it is not possible to terminate employment relationship results from the

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<sup>41</sup> See the ruling of Superior Court in Prague, file 6 Cdo 11/94 of 28 April 1995, in *Právní rozhledy*, Volume 1995, Issue 10, p. 415; and the same ruling of Superior Court in Prague of 7 March 1995, in *Právo a zaměstnání*, Volume 1996, Issue 7-8, p. 44.

<sup>42</sup> This conclusion is also unequivocally confirmed by the decision practice of courts that stated: “During the probationary period a terminating demonstration of will cannot be made in such a way that as the day of termination of employment relationship is determined the day following expiry of the probationary period, and termination cannot be made retroactively, either. Determining the day following expiry of the probationary period or retroactive termination of employment relationship in probationary period is invalid due to contradiction with the content and purpose of the law.” See the ruling of Superior Court in Prague, file 6 Cdo 11/94 of 28 April 1995, in *Právní rozhledy*, Volume 1995, Issue 10, p. 415.

opinion that the period of obstacles at work exceeding 10 working days is not part of the probationary period and employment relationship cannot be terminated in such a manner outside the probationary period.

In our opinion, it is possible to raise a number of reasons against that standpoint that tend to support the interpretation used most frequently in practice, i.e. that the period of obstacles at work does not prevent both the employer and the employee from ending employment relationship by termination in probationary period.

The argument for this standpoint is first of all consideration of the purpose of the provision included in Section 31, Para 2, Labor Code. The purpose of excluding a longer period of obstacles at work from the probationary period is primarily the fulfilling of the probationary period (getting to know whether the employment relationship suits somebody or not) and not protection of the employee against severance of employment relationship.

Another reason supporting this standpoint is a comparison with the legal regulation of prohibiting notice of termination of employment relationship. If we agreed to the opinion that during the existence of an obstacle at work it is not possible to terminate employment relationship in probationary period the legal regulation would provide the employee far greater protection than it is in the case of prohibition of notice by the employer. However, this would frustrate the purpose of the institute itself again. At the same time, this interpretation would bar termination of employment relationship in probationary period from the part of the employee, which would mean, if fact, forcing the employee to work against his will, i.e. that would be a hidden form of forced labor.

## **2.5 FURTHER FORMS OF THE TERMINATION OF AN EMPLOYMENT**

The further forms of the termination of an employment are not depended on the will of the parties of this employment. There are:

- expiry of the term,
- a decision of authorities,
- death of the employee.

### **2.5.1 Termination of a fixed-term employment relationship**

There is a special legal regulation for termination of employment relationship agreed for a fixed term.

Fixed-term employment relationship is a special kind of employment relationship in which the parties have agreed on the period of duration of this employment relationship when negotiating their contract of employment, i.e. they agreed on the moment in future by reaching of which the employment relationship ends. In Czech law the fixed-term employment relationship is regulated in Section 30, Labor Code, which reflects provisions of the Council directive No 1999/70/ES of 28 July 1999 which made effective the framework agreement concluded among the organizations ETUC, UNICE and CEEP on fixed-term employment contracts. Section 30, Para 1, Labor Code, establishes, first of all, priority of employment relationship for an indefinite term (an irrefutable presumption that the employment relationship was agreed on for an indefinite term unless the period of its duration is expressly stated in the contract of employment). Out of the possible variants of prevention of misuse of fixed-term employment relationship the Czech legal regulation made use of the option to establish the utmost admissible duration of fixed-term employment relationships following one another. Pursuant to this provision a fixed-term employment relationship may be:

- agreed upon, or

- prolonged by an agreement of the parties, or
- repeatedly agreed by the same parties,

in total, for the period of two years at most since the commencement of this employment relationship. The above mentioned time limitation does not apply if a period of more than six months expired since termination of the previous fixed-term employment relationship.

However, limitation by these rules of the possibility to negotiate fixed-term employment relationship does not hold absolutely as Section 30, Para 3, Labor Code, allow some exceptions:

- negotiating fixed-term employment relationship is presupposed by a special legal regulation (e.g. Act No 111/1998 Coll. on Universities as amended – employment relationship of academic workers) – Section 30, Para 3a), Labor Code,
- negotiating fixed-term employment relationship is set forth by a special legal regulation as a precondition of existence of other claims (e.g. Section 37, Para 1, Act No 155/1995, Coll. on Pension Insurance as amended – concurrence of pensions)
- negotiating fixed-term employment relationship results from reasons lying in the special nature of the job the employee is supposed to perform – Section 30, Para 3c), Labor Code.

For a fixed-term employment relationship to arise in the last two mentioned examples the given reasons must be stated in more detail in a written agreement with the respective trade union. These reasons may be stated in writing in more detail by the employer himself only if there is no trade union in his company.

At the same time, the legal regulation also allows so that the collective agreement identified the circle of employees with whom a fixed-term employment relationship cannot be agreed – Section 30, Para 5, Labor Code.

The new legal regulation of fixed-term employment relationship also includes a special institute of protection of the employee, namely, the irrefutable legal presumption of negotiation of indefinite-term employment relationship. The employment relationship will be considered as agreed for an indefinite term if the following preconditions are met – Section 30, Para 4, Labor Code:

- the employer agreed a fixed-term employment relationship in spite of the preconditions stipulated in Section 30, Para 2 and 3, Labor Code, not being met, and
- the employee gave the employer, before the expiry of the agreed period, a written notice of his insisting on being still employed.

It is at discretion of the court to decide whether the preconditions stipulated in Section 30, Para 2 and 3, Labor Code, were met or not. The proceedings to decide this may be started at the motion of both the employer and the employee. The motion may be filed within the period of two months since the day when the employment relationship was supposed to end by the expiry of the agreed period; it is a lapse period (Section 261, Para 4, Labor Code).

The special regulation of fixed-term employment relationship (Section 30, Para 2 to 5, Labor Code) does not apply, pursuant to Section 30, Para 6, Labor Code, to employment relationships concluded between the employer mediating employment under a special legal regulation (the so-called job agency) and the employee and the purpose of those employment relationships is to perform a job with another person.

It is typical for fixed-term employment relationship that it ends by the mere expiry of the agreed term but the legal regulation does not exclude other manners of terminating such an employment relationship before the expiry of the agreed term.

### **Expiry of the term**

A fixed-term employment relationship ends primarily upon expiry of the agreed term (Section 56, Para 1, Labor Code). The expiry of the term agreed for fixed-term employment

relationship is an objective legal fact, which means that the mere expiry of time is sufficient for the arising of legal effects (i.e. termination of employment relationship) and it is not necessary to make another declaration of will of the parties to the employment relationship.

For a fixed-term employment relationship to be terminated by expiry of the term the following preconditions must be met pursuant to the legal regulation in force:

- an agreement of the parties on when the fixed-term employment relationship is supposed to end made as part of their employment contract or as part of an agreement on a change of the employment contract,
- before the expiry of the agreed term there was neither a change in the duration of the employment relationship nor the employee continued to work with the employer's awareness of it.

If all the above mentioned preconditions are met the fixed-term employment relationship ends upon expiry of this term. Termination of employment relationship by this manner is not blocked by a situation constituting, for example, prohibition of notice of termination of employment relationship.

Determining the moment of termination of a fixed-term employment relationship depends on how the duration of this employment relationship was specified, i.e. whether it was specified by calendar data or by duration of the agreed work. The option of variable specification of the fixed term, limiting the duration of employment relationship for a fixed term, also results from court rulings that stated on this matter: "The duration of a fixed-term employment relationship may be agreed not only by a direct time data, i.e. expressing the term in weeks, months or years, or with the period of duration of a certain work, but it may also be agreed on the basis of other objectively ascertainable facts not specified by a particular day the actual duration of which the parties may not even be aware of when concluding the employment contract and which are certain enough to exclude any doubts about when the fixed-term employment relationship ends by expiry of the agreed term."<sup>43</sup>

The simplest manner of agreeing on a fixed-term employment relationship is when the contract of employment states the day on which the employment relationship is to be ended. In such cases there are usually no doubts about when the moment of termination of employment relationship takes place. Termination of employment relationship in such cases is not even affected by the fact that the respective day falls on a Saturday or Sunday, or a holiday.

There will not be any probably problems, either, with determining the moment of termination of employment relationship if the duration of employment relationship was determined by a number of days. Certain doubts might arise only with the question whether only weekdays should be counted or calendar days in general.

A more difficult situation may happen if the duration of employment relationship is specified by calendar data but in weeks, months or years. For determining the moment of termination of employment relationship it will be necessary, in our view, to use adequately the provision of Section 266, Labor Code, regulating time calculations. However, it is necessary to bear in mind that this provision is systematically ordered in the Labor Code in relation to the regulation of time limits for making claims and that time limitation of employment relationship is not of that nature, of course.

Pursuant to Section 266, Para 2, the last day of the time limit determined in weeks, months or years falls on the day the name or the number of which corresponds to the day from which the time limit is calculated from. However, the cited provision has to be applied to determining the moment of termination of employment relationship only adequately. First of

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<sup>43</sup> See the ruling of the Supreme Court of the Czech Republic, file 21 Cdo 1990/2000 of 5 September 2001, in Soudní judikatura, Volume 2002, Issue 1.

all, determining the moment from which the duration of employment relationship is counted is linked with the agreeing the contract of employment with a certain peculiarity consisting in the fact that the beginning of the duration of employment relationship is postponed by the time by which the agreed day of the commencement of work differs from the day of the concluding of the contract of employment (employment relationship is created on the day agreed in the contract of employment as the day of the commencement of work). The last day of this postponement is the day which immediately comes before the day of the commencement of work. The day of termination of employment relationship is then the day the name or number of which corresponds to this day. In our opinion, as such day we cannot consider the day the name or number of which corresponds to the day of the commencement of work because a new term of employment relationship (a new week, month or year) is actually started with that day. It is for this specific nature (specific determination of the beginning of the term) that we infer that the provision of Section 266 may only be used adequately.

Regarding the fact that the duration of fixed-term employment relationship does not comply, by its nature, with time-limits for asserting one's right it is not possible, in our opinion, to apply Section 266, Para 3, regulating the calculating of the time-limit if the final day of the time-limit falls on a Saturday, Sunday or public holiday. An application of these provisions is not possible because in the case of fixed-term employment relationship it is a mere flow of time and not a definition of a time-limit within which the party should be obliged to do something (to assert one's right).

However, the duration of a fixed-term employment relationship may also be determined by a manner different from determining a calendar data. The duration of employment relationship may be limited to the period of performance of a certain work. Such a limitation of a fixed term is usually used when the employer needs in a certain period more workers than usually but is not able to determine in advance (by a calendar data) when such transitory need ends. Such transitory need of more workers is usually linked with season work but it need not be a rule.

The employment relationship in such a case ends upon expiry of duration of the agreed work. For this effect to occur (termination of employment relationship), it must be unequivocally clear from the contract of employment that the employment relationship was expressly agreed for the duration of such work.

Section 56, Para 1, Sentence Two, stipulates a duty of the employer to notify the employee reasonably in time, if the work is supposed to end – as a rule at least three days in advance. The time-limit mentioned in Section 56, Para 1, Sentence Two, is, though, only for order purpose, i.e. failure to keep this time-limit does not affect termination of employment relationship by termination of the need of this work. Here, employment relationship always ends on the basis of objective legal facts (expiry of the duration of certain work) and not by a legal act of the employer (notification of the end of the agreed work). On the other hand, it is necessary to bear in mind that the duty to remind the employee of the end of work at least three days in advance is stipulated as a duty of the employer. If the employee suffered a loss connected to failure to keep this time-limit the employer would be liable for it pursuant to Section 187, Para 2, Labor Code.

### **Continuing a fixed-term employment relationship after expiry of this term**

If the employment relationship is agreed for a fixed term there is a strong presupposition and also the most frequent practice that the employment relationship ends upon expiry of this term. However, there may appear cases when the employment relationship ends before expiry of the agreed term and there may also be cases when the employment relationship continues to exist even after expiry of this term.

An employment relationship may continue after expiry of the agreed term first of all if there is a contract. A particular situation may be:

- before expiry of the agreed term of the employment relationship the employee and the employer agree on its prolongation and the character of fixed-term employment relationship is preserved,
- before expiry of the agreed term the employee and the employer agree on not limiting the existence of employment relationship in time, i.e. a fixed-term employment relationship is changed by agreement of the parties to an indefinite-term employment relationship.

For both variants it holds, of course, that the agreement of the parties on prolongation of a fixed-term employment relationship or on a transformation of a fixed-term employment relationship into an indefinite-term employment relationship must be made before the original agreed moment of termination of employment takes place. Otherwise, such an agreement on a change of employment relationship (prolongation of employment relationship) would not be possible because the employment relationship was ended and there was nothing to be changed then.

An employment relationship agreed on a fixed term may continue, though, even without an express agreement of the parties. Such a situation is covered by the provision of Section 56, Para 2, Labor Code. It holds in such cases that a fixed-term employment relationship was changed into an indefinite-term employment relationship if the following preconditions are met:

- the employee continues to work for the employer after expiry of the agreed term,
- the employer is aware of this.

The basic precondition for application of the cited provision of the Labor Code (irrefutable legal presupposition) is first of all an activity of the employee. The activity of the employee must consist in performing work which was agreed upon in the contract of employment, or which the employee was instructed to do in the sense of Section 37 or 37, Labor Code. The second precondition is also activity as well as passivity of the employer. The activity is the situation when the employer actively instructs the employee to work without realizing that the moment of termination of the employment relationship has come (this is activity of the employer supervising the employee in the sense of Section 9 and 10, Labor Code). Passivity of the employer is then the situation when the employer does not actively instruct the employee to work but is aware of the employee's performance of the job and does not expressly prohibit it. For defining this precondition there was also a contribution of courts that ruled that: "For accomplishing the concept of "with the employer's awareness" (Section 56, Para 2, Labor Code) it is sufficient for work to be done only with awareness of the immediate supervisor of the employee."<sup>44</sup> If the employee continued to work despite an express prohibition of the employer, the provision of Section 56, Para 2, Labor Code, could not be applied because it would be abuse of right (Section 7, Para 2, Labor Code) and the conduct of the employee would be avoiding the meaning and the purpose of the law (Section 242, Para 1a), Labor Code).

### **Termination of a fixed-term employment relationship before expiry of the agreed term**

If an employment relationship is agreed by the parties for a fixed term it is typical that such employment relationship will last for the agreed term and will end by its expiry. On the other hand, the agreement on the term of employment relationship does not exclude, though,

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<sup>44</sup> See the ruling of the Supreme Court of the Czech Republic, file 21 Cdo 2080/2001 of 21 October 2002, in Soudní judikatura, Volume 2003, Issue 1, p. 27.

that even a fixed-term employment relationship may end prematurely before expiry of this term. The opposite situation (i.e. excluding the possibility of terminating a fixed-term employment relationship before expiry of the agreed term) would clearly establish the legal existence of forced labor in the legal regulation. However, forced labor is an institute which is not admissible in the legal regulation.

Pursuant to Section 57, Labor Code, a fixed-term employment relationship may also be terminated before this term by the other manners established in Section 42, Labor Code. Thus, a fixed-term employment relationship may be terminated before expiry of the agreed term by:

- an agreement of the parties on termination of fixed-term employment relationship (Section 43, Labor Code),
- notice of termination of fixed-term employment relationship (Section 44 and subsequent ones, Labor Code),
- instant termination of fixed-term employment relationship (Section 53 and subsequent ones, Labor Code),
- termination of fixed-term employment relationship during the probationary period if it was agreed (Section 58, Labor Code),
- a decision of authorities (Section 42, Para 3, Labor Code),
- death of the employee (Section 42, Para 4, Labor Code).

As these manners of termination of fixed-term employment relationship do not differ from termination of indefinite-term employment relationship on the basis of the same legal facts we refer to our previous analysis.

### **2.5.2 Termination of employment relationship upon a decision of the authorities**

Pursuant to Section 42, Para 3, Labor Code, an employment relationship may also be terminated by a final decision cancelling the employee's residence permit or on the day when a decision to expel such a person from the Czech Republic acquires legal force. This manner of termination of employment relationship is not, though, a general one and its application is limited to a precisely defined circle of persons whose employment relationship should be terminated by this manner. A decision by the authorities may only terminate employment relationship of foreigners or stateless persons; employment relationship of a citizen of the Czech Republic (or a citizen of another member state of the European Union or his family member – these have the same status as a Czech citizen). In other words, this manner of termination of employment relationship only concerns foreigners or stateless persons except for the member states of the European Union.

When characterizing generally this manner of termination of employment relationship it may also be noted that it is a termination of employment relationship on the basis of personal legal facts that have a character of the authorities' decision. It is not personal legal facts accomplished directly by the parties to the employment contract (as it is with personal legal facts mentioned in Section 42, Para 1, Labor Code) but these demonstrations of will are made by persons that are different from the parties to the employment relationship having the status of administrative bodies or bodies of the judicial system.

Employment relationship of a foreigner may be terminated, of course, by all manners that the Labor Code provides for in Section 42. If the employment relationship was not terminated by general manners of termination it may be terminated by the manner regulated in Section 42, Para 3, Labor Code. In this context it should also be noted that preconditions of this manner of termination of employment relationship are usually outside the employment relationship itself but their result concentrated into the authorities' decision has legal consequences for the employment relationship itself.



### **Termination of employment relationship upon cancelling the employee's residence permit**

Upon cancelling the employee's residence permit the employment relationship of a foreigner or a stateless person is terminated on the day when their residence is to be ended on the basis of a final decision. Therefore we may say that employment relationship is not terminated directly on this decision coming into force but on the day which is stated in that decision as the day of termination of their residence in the territory of the Czech Republic. However, the principal legal reason for termination of employment relationship is the decision itself about cancelling residence permit which only may establish a certain time shift. In view of this fact we therefore state that employment relationship is terminated on the basis of a personal legal fact which has a character of the authorities' decision and not on the basis of an objective legal fact – expiry of time.

Residence of citizens in the territory of the Czech Republic is regulated by Act No 123/1992 Coll. on Residence of Foreigners in the Territory of the Czech Republic as amended. As for employment, the so- called short-term residence is excluded and only the long-term or permanent residence may come into consideration. The long-term residence is granted for a period needed to achieve a purpose, one year at the latest and it may be repeatedly prolonged. The above mentioned act also regulates termination of residence of foreigners in the territory of the Czech Republic but unlike the Labor Code there is not the concept of cancelling residence permit there; we may only find there the concepts of prohibition of residence in the territory of the Czech Republic or extinction of right to residence, or banishment.<sup>45</sup>

### **Termination of employment relationship on the basis of a final decision about banishment**

The employment relationship of a foreigner or a stateless person ends on the day when a decision about banishing such a person from the Czech Republic comes in force. Unlike the previous case the termination of employment relationship is not directly linked with the fact of banishment but is only linked with the legal force of the respective judgment. Therefore we may also speak about termination of employment relationship on the basis of a subjective legal fact which has the character of an official decision.

### **Work permit and termination of employment relationship**

Pursuant to Section 89, Act No 435/2004 Coll. on Employment the precondition for hiring a foreigner or a stateless person includes, in addition to residence permit, also work permit (with exceptions established by the cited act). Work permit is granted to a foreigner or a stateless person by employment offices as the basic authorities operating in the area of employment. However, as employment offices decide about granting work permit they may also decide about withdrawal of this permit. Therefore it is appropriate to consider what consequences of withdrawal of work permit there will be for the existence of employment relationship of a foreigner or a stateless person.

Right to employment guaranteed by the Charter of Fundamental Rights and Freedoms means not only right to mediation of a suitable job but it also includes a certain protection of the acquired job in the sense that the citizen who wants to work and has acquired a job cannot be deprived of that job without a reason. Protection of stability of employment relationship is not, of course, absolute because absolute stability would mean impossibility to terminate the employment relationship at all, which would come into conflict with some other principles (in

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<sup>45</sup> General courts decide in the same manner. See, for example, the ruling of the Supreme Court of the Czech Republic, file 21 Cdo 572/98 of 19 April 1999, in *Sbírka rozhodnutí NS*, Volume 2000, Issue 5, p. 292.

particular, the prohibition of forced labor but also the right of the employer to form his work collective according to his own decision). The required degree of stability of employment relationship is expressed and secured in the legal regulation by the respective legal regulations (most generally in the Labor Code) precisely establishing the manners of terminating employment relationship and not allowing its termination by a manner different from that expressly regulated.

If we go back to the provision of Section 42, Labor Code, we may state that this provision includes a full (complete and exhaustive) list of manners by which employment relationship may be terminated. The cited regulation may also be interpreted in the sense that employment relationships that are regulated by provisions of the Labor Code can only be terminated by one of the manners mentioned in Section 42 of that legal regulation.

However, as a special manner of termination of employment relationship we find in Section 42 no provision that would react to withdrawal of work permit. In view of this fact we have to come to the unequivocal conclusion that the decision itself of the respective authority (employment office), even if the final one, about withdrawal of work permit does not cause legal effects consisting in termination of employment relationship; the employment relationship continues to exist regardless of withdrawal of work permit. On the other hand, it cannot be ignored that after withdrawal of work permit the foreigner or the stateless person cease to meet the condition established by law for their employment and it is considered illegal work in the sense of the cited act.

Such a situation must then be solved differently. First of all, a fixed-term employment relationship could be used which would be agreed for the period of validity of work permit. Then, if the work permit is not prolonged, the employment relationship is terminated by expiry of the term, i.e. not by expiry of the period of validity of work permit but by expiry of the term for which the fixed-term employment relationship was agreed. The work permit itself is not a legal fact that would affect the existence of employment relationship. If the work permit is prolonged, it is possible, of course, to make an agreement with the employee (a foreigner or a stateless person) about a change of employment relationship by which the fixed term is prolonged but the character of a fixed-term employment relationship is preserved.

If an indefinite-term employment relationship has been agreed with a foreigner or a stateless person, the above mentioned procedure cannot be used, of course. Despite that we hold the view that the legal solution is equivocal here, too. Work permit is prescribed by the respective legal regulations as a precondition for employment (performance of work). Withdrawal of work permit can be considered as a loss of the precondition prescribed by legal regulations. The loss of the preconditions prescribed by legal regulations for work performance is then the reason for notice of termination of employment pursuant to Section 46, Para 1e), Labor Code. Even if the provision of “not meeting the prerequisites laid down in statutory provisions for performance of the agreed work” is mostly considered from the viewpoint of the employee and his qualifications such a requirement is not expressly stated in the respective provision. In our opinion, it is then possible from the viewpoint of the employer to give notice pursuant to Section 46, Para 1e), Labor Code, if the employee is deprived of work permit and this employee has an indefinite-term (or even fixed-term) employment relationship.

### **2.5.3 Termination of employment relationship by death of the employee**

One of the basic prerequisites of existence of employment relationship is especially the existence of persons involved in it, i.e. the employer and the employee. If this prerequisite ceases to be met during the employment relationship, i.e. if the employer ceases to exist or the employee dies, such a situation must be, of course, reflected in the existing employment

relationship. Cessation of the existence of the employer and the death of the employee do not affect the existence of employment relationship in the same manner, though.

Cessation of the existence of the employer, if his liquidation begins at the same time, is a very serious fact undoubtedly affecting the existence of employment relationship and it may be a reason for its termination. However, in the Czech legal regulation cessation of the employer with liquidation is not a legal fact which would directly cause termination of employment relationship. If the existing employment relationships are to be terminated in connection with cessation of the existence of the employer with liquidation there must be applied general manners of termination of employment relationship, i.e. an agreement about termination of employment, notice, etc. Cessation of the existence of the employer with liquidation is a reason for notice of termination of employment from the part of the employer pursuant to Section 46, Para 1a), Labor Code. At the same time, in the case of cessation of the existence of the employer, if the employment relationships were terminated until the moment of the actual cessation, continuity of the legal relationship is preserved so that in the sense of Sections 249-251, Labor Code, rights and duties from labor relationships pass to the successor (a liquidator, or the state if the employer was organizational part of the state).

If the employer ceases to exist without liquidation this cannot be used a reason for termination of employment relationship. Pursuant to Section 249 and subsequent ones, in such cases rights and duties from labor relationships pass to the successor, i.e. employment relationships are preserved. Such a situation is out of our analysis, though, so we will not pay attention to it any more.

On the other hand, death of the employee is always a legal fact with legal implications consisting in termination of employment relationship. The direct link between the employment relationship and the employee is due to the fact that the work obligation of the employee is of personal nature and is bound to his person. It is not allowed for another person to perform work on behalf of the employee in his employment relationship. Death of the employee is therefore an objective legal fact (legal event) which automatically causes the above mentioned legal consequence. For termination of employment relationship it is not decisive when the employer gets to know this legal fact. Employment relationship is terminated at the very moment of the employee's death. The employee's death is a legal fact resulting in termination of employment relationship, which is regulated in Section 42, Para 4, Labor Code.

## **2. 6. SPECIALITIES OF TERMINATION OF SOME KINDS OF EMPLOYMENT RELATIONSHIP**

### **2.6.1 Subsidiary employment relationship**

Subsidiary employment relationship refers to the employment relationship that is agreed during an employment relationship for the prescribed weekly working time (Section 70, Para 1, Labor Code). The employment relationship agreed for the prescribed weekly working time is called a main employment relationship whereas a subsidiary employment relationship agreed in addition to that may be agreed for a shorter time than is the prescribed weekly working time.

The Labor Code empowers the government to determine by a decree the highest extent of working time for which a subsidiary employment relationship may be agreed (Section 3, Para 3a), Labor Code) but this empowerment has not been implemented yet so the highest extent of working time in a subsidiary employment relationship is not strictly limited. The only limitation is in the Labor Code itself, namely, a time shorter than the prescribed weekly working time. Therefore we always have to consider this issue according to the employer with

whom the subsidiary employment relationship is concluded. A shorter working time in the subsidiary employment relationship must always be shorter than the prescribed weekly working time at that employer. The government has not even made use of the empowerment contained in Section 70, Para 3b), Labor Code, not limiting the overall highest extent of the agreed working time in two or more employment relationships. In theory, this situation means that the employee could have so many subsidiary employment relationships that the total of their working times and the working time in the main employment relationship would exceed in day average 24 hours. In practice, such a situation should be excluded, but not because of a legal prohibition. Such a state of affairs should be practically excluded because in such employment relationships the employee could not undoubtedly perform his work and the employer who duly checks performance of work would have to terminate such an employment relationship for breach of work discipline.

### **Termination of a subsidiary employment relationship**

This type of employment relationship may be terminated by all manners mentioned above when analyzing general manners of termination of employment relationship. Some manners have a little different, less severe, legal regulation, though. These are:

- agreement about severance of employment relationship,
- notice of termination of employment relationship,
- instant termination of employment relationship,
- termination of employment relationship during probationary period,
- expiry of time,
- death of employee,
- authorities' decision.

In the following analysis we will only focus on different legal regulations. If there is no different legal regulation we will only refer to the general analysis of the respective manner of termination of employment relationship.

#### **Agreement about termination of employment relationship**

For a subsidiary employment relationship there are no differences from the general legal regulation of this institute.

#### **Notice of termination of employment relationship**

Notice of termination of a subsidiary employment relationship is regulated in substantially simpler way than general notice. This situation is a consequence of the fact that it is a subsidiary employment relationship, i.e. an additional engagement in work and an additional source of income beside the main employment relationship which is the main source of income for satisfying the employee's needs. Therefore, in a subsidiary employment relationship the employee is provided with a substantially lesser protection of stability of this work engagement.

The regulation of notice of termination of employment relationship is uniform for both the employee and the employer.

The notice as a unilateral legal act must be given in writing and must be served on the other party – the general legal regulation applies without any exceptions.

Legal effects of notice of termination of subsidiary employment relationship are also postponed with the so-called length of notice. The length of notice and the manner of its calculation are regulated in a separate manner, though. The length of notice for both parties is 15 (calendar) days and starts to run on the day when the notice of termination of subsidiary employment relationship was served on the other party.

Both parties to the employment relationship (the employee and the employer) may give notice of termination of subsidiary employment relationship stating any or no grounds. There is a principal difference of this notice from the part of the employer because the provision of Section 46, Para 1, Labor Code, defining reasons for the notice from the part of the employer does not apply.

For the notice from the part of the employer the following general substantive reasons do not apply, either:

- duty to offer another job in the case of notice from the part of the employer (Section 46, Para 2, Labor Code),
- duty to help the employee in seeking another job outside the employer, or to provide him with such a job in the case of notice from the part of the employer (Section 47, Labor Code),
- prohibition of notice from the part of the employer (Sections 48 and 49, Labor Code),
- participation of trade union bodies in notice from the part of the employer (Section 59, Labor Code).

#### Instant termination of employment relationship

For instant termination of subsidiary employment relationship there applies the general legal regulation of this institute except for prohibition of instant termination of employment relationship from the part of the employer (Section 53, Para 3, Labor Code) and participation of trade union bodies in instant termination of employment relationship from the part of the employer (Section 59, Labor Code). However, it should be noted that this manner of termination is not generally used with subsidiary employment relationship, mainly because it is very easy to terminate a subsidiary employment relationship by notice.

#### Termination of employment relationship in probationary period

The general legal regulation applies here, too, provided a probationary period has been agreed on. In the case of subsidiary employment relationship it is very exceptional to agree on a probationary period but it is not excluded.

For the other possible manners of termination of subsidiary employment relationship mentioned above the general legal regulation applies without other exceptions.

### **2.6.2 Employment relationship for shorter working hours**

Employment relationship for shorter working hours is characterized in the fact that the parties have agreed on the length of working hours being shorter than the stipulated weekly working hours. On the one hand, the extent of the possible agreement on a shorter length of working hours is not limited by a legal regulation. On the other hand, pursuant to Section 86, Para 1, Labor Code, the employer has a duty to create working conditions for shorter working hours where employees with health or other serious reasons (e.g. care of a child) on their part could be employed.

Employment relationship for shorter working hours may have three possible forms:

- parallel part-time employment for shorter working hours
- separate part-time employment for shorter working hours
- two or more separate employment relationships for shorter working hours.

#### Termination of employment relationship for shorter working hours

A special regulation for termination of employment relationship for shorter working hours is only established in the case of parallel part-time employment. Protection of the employee after its termination is limited by the manner which has been analyzed above.

However, the employment relationship for shorter working hours enjoys the same protection as employment relationship for stipulated weekly working hours. Regarding this principle, the manners of termination of employment are not specially regulated and the general legal regulation, as mentioned above, is applied here fully.

In the case the employee is a party to two (or more) separate employment relationships for shorter working hours, each of these employment relationships is judged separately and after their termination there, too, fully holds the general legal regulation after termination of employment relationship.

## **2.7. OTHER ENTITLEMENTS LINKED WITH EMPLOYMENT TERMINATION**

### **2.7.1 Leave from work for finding a job**

Employment termination is linked with another institute of labor law, i.e. an impediment at work on the part of the employee. It is a personal impediment at work which is stated in an annex to Government Decree No 108/1994 Coll. by which the Labor Code is implemented. Impediment at work means finding a new job before the employment termination. The employee is entitled to unpaid leave from work for a necessary time, one half-day a week at most for a period corresponding to the length of notice. If a notice was given for a reason established in Section 46, Para 1 a) - d), Labor Code, or for the same reasons an agreement on terminating employment relationship the employee is entitled to leave from work to the same extent and also to reimbursement of pay for the period of leave. The leave provided by the employer can also be amalgamated with his consent. The employee must, of course, prove the necessary period needed for finding a job.

### **2.7.2 Employer's references and working paper**

In connection with termination of employment relationship the employer usually makes an evaluation for the employee which he may need for a new employer of his. Such an evaluation may concern very closely personal information about the employee and it may state things that could harm him, etc. Therefore making and issuing such evaluations is comparatively strictly regulated and it is possible to make them only in connection with termination of employment relationship. The Labor code allows a special way of protection against information in such an evaluation.

The evaluation of the employee's work is done by the employer in the form of the so-called employer's references. Employer's references (Section 60, Para 1, Labor Code) include all documents concerning the evaluation of the employee's work, his qualifications, skills and other facts that are related to performance of the job. The above mentioned provision defines first of all the content of the employer's references, i.e. it cannot include information that is not related to the work performed.

The employer is obliged to issue his references at the employee's request within 15 days (since submitting the request). The period for issuing employer's references is also set by the beginning, namely, that the employer need not issue the references until during two months before the employee's employment relationship is terminated (we may say that with the general length of notice being started there also arises the duty to issue employer's references). However, the Labor Code does not restrict the time in which the employee, after termination of employment relationship, may request the employer's references.<sup>46</sup>

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<sup>46</sup> "The employer is obliged to issue references for the employee (employer's references) at his request within 15 days even if the employee asked for issuing the references after termination of their employment relationship; unless the acting of the employee represented abuse of right pursuant to Section 7, Para 2, Labor Code." See the

The second way of evaluating the employee may be working paper. However, this instrument has clearly a different purpose than employer's references. The purpose of working paper is to tell the future employer all facts that are or may be important for the course of the employee's employment, for his entitlements from employment relationship and for his duties in relation to the original employer, or third persons.

Fore the content of working paper there are important provisions, namely Section 60, Para 2, Labor Code, and Section 3, Decree of Government No 108/1994 Coll. The Labor Code does not define the content of working paper referring to the executive regulation which is the above mentioned Decree of Government. Pursuant to Section 3, Decree of Government No 108/1994 Coll. it is necessary to state:

- information about employment
- kind of performed work
- qualifications
- information on deductions from wage
- facts decisive for considering entitlement to health insurance benefits
- information about the period relating to pension entitlement in the I. and II. categories for purposes of pension entitlement in the period before 1 January 1993
- the period of work and other facts decisive for achieving the utmost expository time that is allowed
- information about an agreement on staying in employment relationship for a certain time after passing a final examination or the state final examination
- information about the average earnings and other facts decisive for considering entitlement to wage payment, unemployment benefit and re-qualification allowance.

Other information (than that which is the subject-matter of employer's references and working paper) can be given by the employer about the employee only with his consent (Section 60, Para 3, Labor Code). The duty to give required information about the employee may also be stipulated by other legal regulations, of course; it is allowed by the Labor Code. Such a legal regulation is, for example, Act No 550/1991 Coll. on General Health Insurance or Act No 582/1991 Coll. on Organization and Implementation of Social Security and some other. In connection with protection of information about the employee it is also necessary to mention Act No 101/2000 Coll. on Protection of Personal Information.

After termination of employment relationship the employer also is obliged to give the employee other documents concerning personal information about the employee (Section 60, Para 2, **in fine**). However, this provision does not affect the duty of the employer to keep for a prescribed period the information stipulated by a special regulation – for example, Act No 563/1991 Coll. on Accounting, or Act No 97/1974 Coll. on Keeping Records.

As mentioned above, there is a special way of protection set up against information in employer's references and working paper. This protection is an action which may be brought by the employee for a correction of the content of employer's references or working paper and this correction consists in imposing the employer the duty of to modify the references or the working paper in an appropriate way. The authority entitled to decide the action is the court. The action must be brought within the period of 3 months since the day when the employee learned the content of the challenged references (Section 60, Para 4, Labor Code). The period of 3 months is subject to lapse (Section 261, Para 4, Labor Code), by fruitless expiry of the period the employee's right to seek correction of the content of the employer's references or working paper becomes extinct.

If the employer failed to fulfill his duty to give references or working paper (or if he gave them but with incorrect content that had to be corrected through judicial proceedings) and the employee suffered a loss because of that, the employer is liable to compensate him for the loss.<sup>47</sup>

### **2.7.3 Severance payment**

In connection with termination of employment relationship the Labor Code also regulates the institute of severance payment. At present, we can find two types of severance payment in the Labor Code, namely, severance payment in the case of termination of employment relationship due to reorganization on the part of the employer and severance payment in the case of termination of employment relationship due to health reasons on the part of the employee.

#### **Severance payment due to reorganization**

Severance payment consists in monetary performance provided by the employer to the employee as a certain kind of satisfaction for the employment relationship being terminated due to reasons on the part of the employee. Severance payment is regarded as satisfaction because it actually compensates the employee for the employer's solving his troubles with redundant workers at the employee's expense, or for other reasons on the part of the employer. It is a relatively new institute that was not introduced into the Czech labor law until recently. In the present labor law the institute of severance payment was first regulated by Regulation No 195/1989 Coll. on Securing Workers During Reorganization And Citizens Before Commencement of Employment, and then by the related Act No 195/1990 Coll. on Severance Payment. The previous regulation did not differ much from the present regulation included in the Labor Code. At present, severance payment is regulated by Sections 60a to 60c, Labor Code.

The legal reason for severance payment is termination of employment relationship due to stipulated reasons and by the stipulated manner which may be:

- notice by the employer due to reasons established in Section 46, Para 1 a) to c), Labor Code, or
- agreement between the employer and the employee due to reasons established in Section 46, Para 1 a) to c), Labor Code.

The right to severance payment in the case of termination of employment relationship arises even when the reason for termination (organizational changes on the part of the employer) has not been expressly stated in the agreement. This conclusion unambiguously results from the settled practice of courts that ruled: "If there is an agreement between the parties on termination of employment relationship due to reorganization on the part of the employer, the fact that the reason for termination of employment relationship is not expressly stated in the written agreement does not make this agreement invalid, and the employee's right to severance payment is not excluded either. In such a case the employee has to prove, of course, that reorganization on the part of the employer was really the reason for termination of

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<sup>47</sup> "If the employer fails to fulfill his duty to give the employee, upon termination of employment relationship, working paper, he is liable to compensate him for a loss arisen from that pursuant to Section 187, Para 2, Labor Code. The loss for which the employer is liable to compensate the employee may also be the loss of earnings with another employer if that employer refused to make a contract of employment with him unless he submitted working paper." See the ruling of the Supreme Court, file 21 Cdo 1491/2002, of 20 March 2003, in Soudní judikatura, Volume 2003, Issue 4, p. 264.



employment relationship by agreement, i.e. that there is a causal relationship between the reorganization and the employment termination.”<sup>48</sup>

Right to severance payment arises on the nearest pay day established for payment of wages by the employer after termination of employment relationship. An agreement between the employer and the employee may change the arising of the right so that severance payment may be done:

- on the day of the termination of employment relationship, or
- on the pay day that is later than the nearest one after the termination of employment relationship.

The amount of severance payment is stipulated in Section 60a, Para 1, Labor Code, as the minimum amount, namely, the double of the average earnings of the employee whose employment is terminated by the stipulated manner. The average earnings are determined pursuant to Act No 1/1992 Coll. on Wages, Compensation For Being On Call And On Average Earning, as the average monthly earnings. At the same time, the cited provision allows a higher amount of severance payment being agreed upon in the collective agreement or being stipulated in an internal regulation; the increase may be agreed upon or stipulated by other multiples of the average earnings. For this increased severance payment other conditions may be agreed upon or stipulated under which the employees will have right to it. The increased severance payment may be implemented by the above mentioned manner even at the employers who are not engaged in entrepreneurial activities.

At the beginning of our analysis of severance payment we stated that severance payment has a character of satisfaction for termination of employment relationship due to reasons lying on the part of the employer. That character is also confirmed by Section 60b, Labor Code, which regulates the duty to give back severance payment if the reason for providing it ceased to exist, i.e. the employee has resumed his employment relationship with the original employer. The duty to give severance payment back arises if the employee resumes his employment relationship with the existing employer before expiry of the period determined according to the number of multiples of average earnings from which the amount of severance payment was calculated. In such a case the employee has a duty to give back the full amount of severance payment or the proportionate part of it depending on the number of calendar days since the resuming of his employment before expiry of the stated period.

At the same time, we have to bear in mind that severance payment is a satisfaction in those cases when by terminating from reasons on the part of the employer an employment relationship is ended which represented the main form of the employee's engagement in work. This conclusion is supported by Section 60c, Labor Code, which provides for cases when there is no right to severance payment:

- if the employee was in part-time employment relationship with the employer
- if the employee's rights and duties arising from employment relations passed on to another employer (Section 249 and the subsequent ones, Labor Code) during reorganization on the part of the employer. In such a case, even if it was not expressly stated that there was no right to severance payment, we could not deduce the right to severance payment because the employment relationship has not been terminated.

### **Severance payment due to health reasons**

This kind of severance payment is regulated in the Labor Code as optional one. The legal regulation allows for severance payment in the case of termination of employment

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<sup>48</sup> See the ruling of the Regional Court in Ostrava, file 16 Co 44/95, of 12 April 1995, in *Právní rozhledy*, Volume 1995, Issue 9, p. 373; similarly, the ruling of the Supreme Court, Czech Republic, file 21 Cdo 1667/2001, of 17 May 2002, in *Soudní judikatura*, Volume 2002, Issue 6, p. 423.

relationship due to health reasons (notice given by the employer from the reasons stipulated in Section 46, Para 1d) being stipulated in the collective agreement (in an internal regulation). If such an option is used in the collective agreement (in an internal regulation), then severance payment becomes an obligatory institute. The conditions under which severance payment is provided and the number of multiples of average earnings as the amount of severance payment are also regulated by the collective agreement.

## **2.8 PARTICIPATION OF TRADE UNIONS IN TERMINATION OF EMPLOYMENT CONTRACT**

Trade unions have a legally granted position in labor relationships the purpose of which is to protect interests of employees. Trade unions are social representatives of employees, i.e. they do not protect only interests of their members but all employees. Trade unions operate mostly within the employer's organization even if they unite themselves in higher trade union organizations. Protection of the status of the employee at a particular employer is then task of the respective trade union body representing a trade union organization operating at the employer.

If there is no trade union at the employer protection of employees may partly rest with the so-called council of employees but it does not have such powers as trade unions.

In relation to termination of employment relationship the employees are granted pursuant to Section 18, Labor Code:

- right to information
  - about the probable development of employment,
  - about the intended structural changes, rationalization or organization steps to be taken and - about steps taken in connection with a lay-off;
- right to discussion about steps taken in connection with a lay-off.

If there is a trade union at the employer or a council of employees at least the employees assert those rights through them. If there are no such social representatives at the employer he is obliged to give the above mentioned information to every employee and to discuss a lay-off with them.

However, trade unions have some other important powers recognized by law. The purpose of these powers is to create a space for social protection of all employees at a certain employer in general but also for social protection of individual employees who are to be affected by a particular termination of employment relationship.

Section 59, Labor Code, regulates three manners of participation of trade unions in termination of employment relationship, namely:

- informing
- discussion
- prior consent.

A detailed analysis of prior consent and discussion can be found in the part where notice of termination of employment relationship from the part of the employer is dealt with in detail so refer to it. Thus, here is only a brief summary of the basic characteristics.

Prior consent is an instrument for protection of union officials who members of the respective trade union body that is authorized to co-decide with the employer so that the employer could not use against them termination of employment relationship as a "sanction" for trade union activities that he may not agree with. Higher protection is provided to the trade union official during his term of office and one year after termination of his term of office. The requirement of prior consent is established for notice of termination of employment relationship and instant termination of employment relationship from the part of the employer

that he wants to use against the above mentioned trade union official (Section 59, Para 2 to 4, Labor Code). Lack of prior consent means mostly invalidity of the notice or the instant termination of employment relationship.

Discussion is an instrument for protection of all other employees (except for the above mentioned trade union officials). The employer is obliged to discuss with the respective trade union body any notice of termination of employment or any instant termination of employment relationship by which he wants to sever employment relationship with his employees (Section 59, Para 1, Labor Code). Lack of discussion, however, does not mean invalidity of the notice or the instant termination.

Informing guarantees that trade unions know about all changes in the ranks of employees. Section 59, Para 5, Labor Code, obliges the employer to inform the respective trade union body with “other cases” of severance of employment relationship. By a gradual exclusion of cases that are covered in the previous institutes we may say that “duty to inform” concerns all cases when employment relationship ends by an agreement on severance of employment relationship, notice of termination of employment from the part of the employee, instant termination of employment relationship from the part of the employee or termination during probation period from the part of the employer as well as the employee. The duty to inform must be fulfilled by the employer in fixed periods agreed upon with the respective trade union body. The institute of informing is not capable, of course, to affect severance of employment relationship at a particular employee but it is important for the general awareness of the respective trade union body, helping it to orient in the structure of employees and enabling it to find problematic spots in work conditions that should be discussed about with the employer.

## **2.9 JUDICIAL PROTECTION UPON TERMINATION OF EMPLOYMENT RELATIONSHIP**

In previous parts we were discussing individual manners of termination of employment relationship and necessities prescribed for these individual manners by a legal regulation. In a number of cases we stated that certain necessities of severance are required under the sanction of invalidity of the legal act which was labeled as substantive preconditions of validity of the respective legal act. Protection upon termination of employment relationship is different when employment relationship is to be ended by one of the above mentioned legal acts of the parties to that relationship – severance of employment relationship (agreement, notice, instant termination, termination in probationary period), or when employment relationship ends due to an objective legal fact, or the authorities’ decision.

The issue of invalidity of severance of employment relationship is far more complicated, though, because in individual legal acts there may be mistakes that do not cause directly invalidity but also mistakes that are substantial but the party cannot achieve their redress so in the end they do not cause invalidity of the legal act, either. Finally, the respective legal act may also contain such mistakes that are essential and the party will achieve their redress so it will result in invalidity of the particular severance of employment relationship. In any case, these are such mistakes that are in contradiction to requirements of the legal regulation.

In view of these facts we may distinguish violation of legal regulations and mistakes of legal acts directed to termination of employment relationship in the following manner:

- mistakes of legal acts directed to termination of employment relationship that do not cause their invalidity,
- mistakes of legal acts directed to termination of employment relationship that cause invalidity of these legal acts.

Mistakes of legal acts directed to severance of employment relationship but not causing their invalidity occur quite rarely. These are especially such issues that are defined in the legal regulation as matters of order assisting in the due course of severance of employment relationship. It is, for example, breach of the time-limit of 3 days when employment relationship is terminated in probationary period (Section 58, Para 2, Labor Code). In this case the time-limit is only a matter of order and the Labor Code does not establish for that the legal consequence of invalidity of termination of employment relationship in probationary period.

The same applies to not complying with the prescribed written form where the Labor Code does not connect not complying with the form to invalidity of the legal act – for example, the prescribed written form of the agreement about severance of employment relationship – Section 43, Para 2, Labor Code.

It is also similar with not fulfilling the duty by the employer to inform the legal guardian of a minor employee that the employee gave notice or instantly terminated employment relationship or that the employer did the same against him (Section 164, Para 2, Labor Code). In view of the regulation of the employee's personality in relation to work in Section 11, Labor Code, a statement of the legal guardian of the minor employee is not an element of the party to the legal act.

In the same way we may also characterize the requirement of discussion of notice and instant termination of employment relationship with the respective trade union body. The employer has breached his duty stipulated in the Labor Code but this breach is not reflected in the legal relationship between him and the employee; it may only turn up as the reason of a collective labor dispute between the employer and the respective trade union body.

The most important mistakes of legal act directed to termination of employment relationship are those that cause invalidity of the respective legal act. Employment relationship is terminated on the basis of declaration of will of each party (or both parties) only if the legal act directed to termination of employment relationship is valid. This statement does not mean, of course, that an invalid legal act has no legal effects. The essence lies in that the legal act with an essential mistake does not cause those legal effects that are connected by law to a perfect legal act, i.e. employment relationship is not terminated.

We may then say that on principle a legal act with substantial mistakes does not cause termination of employment relationship. However, the Labor Code does not establish these consequences absolutely. The legal regulation is based on certain conclusions from practice that parties to the employment relationship may find themselves in such a situation after a legal act affected by a mistake that they do not want the original employment relationship to continue any more. The party in good faith proceeded on the assumption that the termination of employment relationship was due and he has entered in other legal relationships not wishing to cancel these new relationships and returning to the previous ones. In practice, it turns out that the party (especially the employee) that has unsuccessfully attempted to sever employment relationship and has to remain in his original employment relationship loses motivation for due fulfilling of duties in this employment relationship and repeatedly attempts to terminate it.

In view of these facts the Labor Code stipulates invalidity of severance of employment relationship by a special form, i.e. only as a relative and not absolute invalidity that is more frequent in legal regulations. Peculiarities of the legal regulation of invalidity of severance of employment relationship consist in that:

- the employment relationship is not terminated due to an invalid legal act only when the affected party claims in time invalidity of severance of employment relationship in court and insists on continuance of the employment relationship,
- if the affected party claims invalidity of severance of employment relationship within the time-limit in court but he does not want the employment relationship to continue,

the employment relationship is terminated but the law regulates some other claims of his against the other party to the employment relationship,

- for claiming invalidity of employment relationship the law stipulates two-month time-limit (Section 64, Labor Code) and the reason of invalidity may be claimed only by a party to the employment relationship,
- relative invalidity is related to the so-called presumption of validity of legal act until the respective authority (court) decides that such a legal act is invalid.

The above mentioned characteristics are confirmed by decisions of courts that stated: “If the employee or the employer want to prevent the legal effects resulting from severance of employment relationship, they have to start in a two-month time-limit (Section 64, Labor Code) an action to determine invalidity of the legal act severing employment relationship; if such an action was not started the employment relationship between the parties ended by this legal act even if it was an invalid severance of employment relationship. After expiry of the two-month time-limit the court cannot to deal with problem of validity of the severing act even if only as a preliminary question; in the proceedings on determining it applies that the employment relationship continues.”<sup>49</sup>

The right to claim invalidity in court is admitted by the Labor Code exclusively to a party to employment relationship, i.e. the employee or the employer; this right is not admitted to other persons despite their participation in labor relationships (for example, the action to determine invalidity of severance of employment relationship cannot be started by the job office).

Invalidity of severance of employment relationship is claimed by a special declaratory action which is regulated in Section 64, Labor Code. The action to determine invalidity of severance of employment relationship pursuant to Section 64, Labor Code, is a declaratory one but in relation to general declaratory actions pursuant to Section 80 c), Civil Procedure Code, it is a special action. With the general declaratory action the Section 80c), Civil Procedure Code, stipulates a precondition for filing a petition for determination, which is that there lies a pressing legal interest on the determination asked for that must be proven by the plaintiff in court. For a special declaratory action Section 64, Labor Code, does not stipulate the precondition of a pressing legal interest because it is presumed that determination whether an employment relationship was validly severed or not is always pressing. At the same, it is necessary to note the relationship between the declaratory action pursuant to Section 64, Labor Code, and the general declaratory action pursuant to Section 80c), Civil Procedure Code, is a relationship between *lex specialis* and *lex generalis*. If a party misses the time-limit for starting an action to determine invalidity of severance of employment relationship this insufficiency cannot be made up for by a general declaratory action. Even if a party sought determination that the employment relationship lasts it is not possible to re-examine in these proceedings whether a valid legal act directed to severance of employment relationship was made.<sup>50</sup>

The time-limit for starting an action for invalidity of severance of employment relationship in court, stipulated in Section 64, is 2 months. The time-limit starts on the day when the employment relationship was supposed to be terminated by severance.<sup>51</sup> For

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<sup>49</sup> See the ruling of the Supreme Court of the Czech Republic, file 2 Cdon 475/96 of 19 March 1997, in *Soudní judikatura*, Volume 1997, Issue 9, p. 209.

<sup>50</sup> See the ruling cited in the previous footnote.

<sup>51</sup> “The employee may start an action for invalidity of notice (Section 64, Labor Code) anytime after he learned about the existence of the notice regardless of whether the notice was served on him in his own hands; however, the running of the two-month lapse period pursuant to Section 64, Labor Code, does not start before the due

calculating the time-limit the general rules of Section 266, Labor Code, apply.<sup>52</sup> The time-limit is a lapse period and by its fruitless expiry the right of a party to claim invalidity of a legal act in court extinguishes. The time-limit character results from Section 261, Para 4, Labor Code.

The Labor Code connects invalid severance of employment relationship to certain entitlements of the party that has suffered from invalidity and duly claimed invalidity within the time-limit. The claims from invalid severance of employment relationship differ according to who invalidly severed the employment relationship and whether the other party to the employment relationship wants it to continue.

### **2.9.1 Invalid severance of employment relationship by the employer**

If reasons for invalidity of severance of employment relationship consist in an unilateral legal act of the employer (notice, instant termination, termination in probationary period) and the employee claimed in time invalidity of the legal act in court, other claims of the employee depend on whether he insists on the continuance of the employment relationship or not. “The employee may notify the employer that he insists on being still employed, and he may do so any time after the employer gave him invalid notice or invalidly terminated the employment relationship instantly or in a probationary period, but at the latest until the court decision by which the proceedings on the employee’s action to determine invalidity of severance of employment relationship was finally ended and by which invalidity of severance of employment relationship was determined. The employee may change his view of whether he insists on being still employed by the employer.”<sup>53</sup> The notice of the employee that he insists on being still employed by the employer after invalid severance of employment relationship by notice, instant termination or termination in probationary period is “a unilateral legal act of the employee addressed to the employer and it is not required to be in writing for being valid. Declaration of will of the employee may be made by negotiation or omission and it may be express or in another way which does not raise doubts about what the employee wanted to express. The demand of the employee to be still employed by the employer is not met if the employee only started an action for determination of invalidity of severance of employment relationship. The notification of the employee that he insists on being still employed by the employer may only be substituted by such an action in which the employee claimed not only invalidity of severance of employment relationship but also reimbursement of wages in sense of Section 61, Para 1, Labor Code.”<sup>54</sup> However, the employee may do this legal act only after the employer has given him an invalid notice or invalidly terminated the employment instantly or in a probationary period.<sup>55</sup>

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service of the notice (Section 266a), Labor Code). See the ruling of the Supreme Court of the Czech Republic, file 2 Cdon 1580/97 of 28 January 1999, in *Soudní judikatura*, Volume 1999, Issue 4, p. 143.

<sup>52</sup> “The time-limit pursuant to Section 64, Labor Code, for claiming invalidity of severance of employment relationship is a time-limit determined by months and starts to run on the last day of the respective calendar month in which the length of notice expired. Therefore the last day of the running of this time-limit need not always fall on the last day of the second subsequent calendar month.” See the ruling of the Supreme Court of the Czech Republic, file 21 Cdo 1436/2001 of 14 May 2002, in *Sbírka rozhodnutí NS*, Volume 2003, Issue 3, p. 228.

<sup>53</sup> See the ruling of the Supreme Court of the Czech Republic, file 21 Cdo 2905/2000 of 11 October 2001, in *Sbírka rozhodnutí NS*, Volume 2002, Issues 9-10, p. 680; similarly, see the ruling of the Supreme Court of the Czech Republic, file 21 Cdo 227/2000 of 29 December 2000, in *Soudní judikatura*, Volume 2001, Issue 3, p. 143.

<sup>54</sup> See the ruling of Superior Court in Prague, file 2 Cdon 1733/ of 18 February 1995, in *Sbírka rozhodnutí NS*, Volume 1996, Issue 6, p. 191.

<sup>55</sup> Compare the ruling of the Supreme Court of the Czech Republic, file 2 Cdon 1733/96 of 19 February 1997, in *Soudní judikatura*, Volume 1998, Issue 4, p. 82.

The claims linked with invalid severance of employment relationship by the employer are regulated in Section 61, Labor Code.

In the case that the employee notified the employer about his insisting on the existence of employment relationship, the following consequences arise (Section 61, Para 1, Labor Code):

- The employment relationship continues to exist as if there was no severing legal act. The employer is obligated in relation to the employee to fulfill all duties resulting from the employment relationship, i.e. to assign him work pursuant to contract of employment and in the place agreed in contract of employment and to him a wage for performed work. If the performance of work was interrupted the employer is obligated to enable the employee to continue in performing work under conditions agreed in contract of employment.
- The employee is entitled to reimbursement of wage for the period in which the employer did not fulfill his obligations from the employment relationship, i.e. he did not enable the employee to perform work for a wage. Reimbursement of wage is provided at the amount of the average earnings since the day when the employee notified the employer about his insisting on being employed until the employer enables him to continue in his work or until a valid termination of employment relationship accrues.<sup>56</sup>

However, the employee is entitled to reimbursement of wage only for the period during which the employer did not want to employ him but the employee was willing and capable to work for the employer. If the employee refused to perform the agreed work or was not willing to perform a job which the employer is authorized to transfer him to pursuant to Section 37, Labor Code, he is not entitled to reimbursement of wage and his conduct constitutes a breach of work discipline.<sup>57</sup>

On the other hand, it is not decisive for entitlement to reimbursement of wage if the employee was getting financial means in another way during the period when the employer unlawfully did not employ him, i.e. in another employment. Another income may affect reimbursement of wage only when the adjudicated reimbursement of wage is to exceed the period of six months. In such a situation the court may, on the proposal of the employer, adequately lower the reimbursement of wage for another period (i.e. the period exceeding six months) or need not adjudicate it at all. "When considering the request of the employer pursuant to Section 61, Para 2, Labor Code, is possible to take into consideration only circumstances existing after expiry of six months from the total period for which a reimbursement of wage should have been given the employee and circumstances concerning the situation of the employee."<sup>58</sup> When deciding the court will take into consideration especially the other employment of the employee, the work performed and the achieved earnings, or why the employee did not start working (Section 61, Para 2, Labor Code). "The court may lower or not to adjudicate reimbursement of wage pursuant to Section, Para 2, Labor Code, only if it is possible to induce, after assessing all the circumstances, that the employee started to work or could have started to work (and failed to do so without serious reasons) with another employer under circumstances that are in principle the same or even

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<sup>56</sup> "The right to reimbursement of wage in invalid severance of employment relationship may be asserted provided the employee notified the employer about his insisting on being employed and at the same challenged by an action pursuant to Section 64, Labor Code, validity of the severing legal act,...", see the ruling of the Supreme Court of the Czech Republic, file 21 Cdo 2208/2000 of 15 October 2001, in Soudní judikatura, Volume 2002, Issue 3, p. 225.

<sup>57</sup> Similarly, the ruling of the Supreme Court of the Czech Republic, file 21 Cdo 1950/2003 of 18 March 2004, in Sbirka rozhodnutí NS, Volume 2005, Issue 7, p. 354.

<sup>58</sup> See the ruling of the Supreme Court of the Czech Republic, file 21 Cdo 1746/2001 of 13 September 2002, in Soudní judikatura, Volume 2003, Issue 2, p. 93.

better than those he would have had if he performed work in compliance with the contract of employment in the case the employer fulfilled his duty to assign him the agreed work. The same applies if the employee started a business after invalid severance of employment relationship.”<sup>59</sup>

In the case the employee does not insist on being still employed the legal effects of an invalid unilateral legal act of the employer are regulated in a different manner (Section 61, Para 3, Labor Code):

- in particular, despite the unilateral legal act of the employer being invalid, the employment relationship is ended because the law respects will of the employee not to insist on being still employed,
- however, the employment relationship is ended, if the employee does not agree in writing with employer otherwise, by an agreement (legal fiction) on the date stipulated by the Labor Code. This date in the case of invalid notice is the last day of length of notice. In the case of invalid instant termination or termination in probationary period this date is always the day when the employment relationship was supposed to be terminated by the invalid act but the employee is entitled to reimbursement of wage amounting to the average earning for the period of length of notice (2 months).

## **2.9.2 Invalid severance of employment relationship by the employee**

If reasons of invalidity consist in a unilateral legal act of the employee (notice, instant termination, termination in probationary period) and the employer submitted within the time-limit a motion to determine invalidity of the legal act in court, the other claims of the employer depend on whether he declares that he insists on the employee still performing work or not. For assessing the declaration of the employer whether he insists on the employee being still employed or not it applies similarly what was mentioned in our analysis of such a declaration made by the employee. The legal regulation of claims from invalid severance of employment relationship by the employee can be found in Section 62, Labor Code.

If the employer notified the employee that he insists on his continuing to perform work the following legal consequences arise (Section 62, Para 1, Labor Code):

- the employment relationship continues to exist regardless of invalid legal act of the employee. It follows that the employee is obligated to perform the agreed work according to instructions of the employer and the employer is supposed to pay him wage for the performed work,
- if the employee does not comply with the employer’s order (he does not perform work) the employer is entitled to claim compensation for the damage he suffered due to that.

Compensation of damage may be claimed by the employer only when the following preconditions are fulfilled:

- he notified the employee about his insisting on the employee’s continuing to perform work,
- the damage occurred after the employer had notified the employee about his interest to have him perform work. However, the compensation for the period before claiming invalidity of severance of employment relationship is only for one month.

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<sup>59</sup> See the ruling of the Supreme Court of the Czech Republic, file Cpjn 4/2004 of 9 June 2004, in Šbirka rozhodnutí NS, Volume 2004, Issues 9-10, p. 406 and subs.; similarly, the ruling of Superior Court in Prague, file 6 cz 32/92 of 31 August 1993, in Bulletin advokacie, Volume 1994, Issue 2, p. 39.



For the employee's liability to compensate the employer for the suffered loss it must be unequivocally clear that the loss occurred due to breach of the employee's duty to perform work and the employer must also be able to calculate unequivocally the loss occurred.

If the employer does not insist on still employing the employee the legal consequences are regulated in Section 62, Para 2, Labor Code:

- regardless of the unilateral legal act of the employee being invalid it holds that the employment relationship ends as if by an agreement (legal fiction) on a certain date. In the case of invalid notice the day of termination of employment relationship is the last day of length of notice. In the case of instant termination of employment relationship or termination in probationary period it is the day when the employment relationship was supposed to be terminated by this invalid legal act,
- in the case of invalid severance of employment relationship by the employee, if the employer does not insist on the employee's continuing to perform work, the employer is not entitled to compensation of possible damage, though. In such a case, pursuant to Section 62, Para 3, the employer cannot claim compensation of damage at all.

### **2.9.3 Claims linked with invalid agreement on severance of employment relationship**

If an agreement on severance of termination of employment relationship is invalid the claims of the parties linked with invalidity are dealt with in a similar manner pursuant to Section 61 and 62, Labor Code. The claims of the employee in the case of invalid agreement on severance of employment relationship are the same as the claims arising in the case of a unilateral legal act made by the employer, if the reasons of invalidity are on the part of the employer. Section 61, Labor Code, is fully applied.

However, if the reasons of invalidity of the agreement were on the part of the employee and the employer did not insist on the employee's continuing to perform work he cannot claim damages (Section 63, Labor Code). In other cases, the legal consequences of an invalid agreement are considered in a similar manner pursuant to Section 62, Labor Code.

### **2.9.4 Judicial protection in other ways of termination of employment relationship**

A fixed-term employment relationship enjoys a special protection that is regulated separately in Section 30, Para 4, Labor Code, and was dealt with in the above mentioned analysis of this type of employment relationship. Therefore, we will only point out briefly that an action to determine whether preconditions for agreeing the fixed term were fulfilled may be brought to court by the employee as well as the employer within two months since the day when the employment relationship was supposed to be ended by expiry of the agreed term. However, there is a precondition that the employee notifies in writing the employer, before expiry of the agreed term of employment relationship that he insists on being still employed. It is not possible to add court rulings in such matters because this legal regulation is relatively new and no generalizing decisions have been made yet.

Termination of employment relationship by the authorities' decisions is a special situation in which no special judicial protection is needed. Special judicial protection is not needed because the very decisions by which an employment relationship is terminated are either final court decisions (a final decision for banishment) or decisions of administrative bodies that may be subject to judicial review, though.

## **2.10 A SPECIAL LEGAL REGULATION FOR TERMINATING AN EMPLOYMENT RELATIONSHIP**

The determination of sources of the legal regulation for terminating an employment relationship results in defining special legal instruments which regulate the termination of an employment relationship for some groups of employees. These are the cases in which the delegated applicability of the labour Code appears, e.g. where the special statutory provision so expressly stipulates. The special legal regulation is applied to the following groups of employees:

- judges
- public prosecutors
- civil servants in administrative authorities
- members of the security forces
- members of the armed forces

At first sight, the question might be asked if the special legal regulation cannot be considered as unfair in treating some groups of employees. In my opinion, this legal regulation cannot be considered as discriminating and constituting an unfair treatment. The reason for this conclusion may be seen in evaluating the groups of employees whom the special regulation is aimed at. If we look at the above mentioned groups of employees, it is quite clear that they are the employees employed by those bodies implementing executive and judicial power of the state and by the armed forces of the state. Therefore, in my opinion, it is necessary for the employer - the state - to have better opportunity to affect employment relationships in which its state power is implemented and to terminate such employment relationships where the employee ceased to comply with the criteria important for the exercise of state power. Various special ways, as stated below, for terminating an employment relationship for these groups of employees indicate that the employer - the state, on one hand, has the possibility to terminate this employment relationship unilaterally by its decision in cases when its employee ceased to comply with the requirements for the employment, but, on the other hand, the employee also has the possibility to terminate the employment relationship unilaterally in case he is not willing to abide in the employment relationship further.

An employment relationship of a judge terminates in accordance with Section 94 of Act No.6/2002 Coll.:

- with the passage of a calendar year in which the judge has reached the age of 70 years,
- on the date the decision, ascertaining the reasons stated in Section 91 for incapability to exercise the office of a judge due to health reasons, has come into force,
- on the date the decision, he was sentenced for committing an offence or sentenced to imprisonment for committing an offence due to negligence, has come into force,
- on the date the decision, imposing disciplinary punishment of the discharge of office, has come into force,
- on the date the decision, incapacitating the judge or limiting his legal capacity, has come into force,
- on the date when the judge lost the citizenship of the Czech Republic,
- upon the death or on the date the decision, declaring the judge dead, has come into force.

Pursuant to Section 95, para 1 of the cited Act a judge may resign his office. In such a case, the office is discharged upon the expiration of 3 calendar months following the month in which the notice of the resignation was delivered to the President of the Republic.

Act No.6/2002 Coll. also regulates the employment relationships of so called judicial trainees (articling judges), i. e. the persons who are being trained, after having received education in law, for the office of a judge. The above mentioned act, however, regulates some special requirements for entering the employment relationship and defines some special rights and duties of these employees in professional training for exercising the office of a judge but it does not regulate special ways for terminating their employment relationship and it refers to the general legal regulation of the Labour Code.

An employment relationship of a public prosecutor, pursuant to Section 21, para 1 of Act No.283/1993 Coll., terminates on the date:

- when an oath should have been made or if an oath was refused to be made or if it was made with reservation,
- when the agreement to the first attachment was additionally refused after the appointment unless he can be attached with his consent to another public prosecutor's office,
- upon which he lost the citizenship of the Czech Republic,
- upon which he was appointed a judge, elected the Member or Senator of the Parliament of the Czech Republic or the member of the local council,
- upon which he undertook an office in public administration,
- of the 31 December of a calendar year reaching the age of 70 years,
- upon his death or the declaration of being dead.

Pursuant to Section 21, para 2 of the cited Act the employment relationship of a public prosecutor terminates on the date the decision comes into force:

- incapacitating him or limiting his legal capacity,
- sentencing him for committing an offence or being sentenced to imprisonment for committing an offence due to negligence,
- ascertaining the reasons stated in Section 26 for being incapable to exercise the office,
- imposing a disciplinary punishment for the removal from the office of a public prosecutor.

A public prosecutor may, in accordance with Section 21, para 3 of the cited Act, resign from the office under a written notice delivered to the Minister of Justice. His employment relationship terminates upon the expiration of 2 calendar months following after the month when his notice was delivered to the Minister of Justice.

In the same way as in the previous case, Act No.283/1993 Coll. regulates the employment relationship of so called articled clerks (articling attorneys-at-law) i. e. the persons who are being trained, after having received education in law, for the office of a public prosecutor. This special regulation establishes some special requirements for entering the employment relationship and defines some special rights and duties of an articled clerk but it does not regulate special ways for terminating the employment relationship. Pursuant to the provision of Section 33, para 9 of the cited Act the termination of an employment relationship is governed by the general legal regulation of the Labour Code.

A special group of person for whom the legal regulation establishes special ways for terminating the employment relationship also includes so called civil servants. The current situation is, however, that the Civil Service Act comprising the legal regulation has been in force for a long time (the Act was passed in 2002) but its effect has been suspended several times, the last suspension refers to 1 January 2007. Meanwhile, the termination of an employment relationship for civil servants in administrative authorities is governed by the

general regulation for terminating the employment relationship as included in the Labour Code. With the effect as from 1 January 2007 (unless it will be suspended again), the employment relationship of the civil servants will be terminated in the following ways:

- upon the decision of the civil service body under the grounds laid down in Section 55, para 1 of the Civil Service Act
  - failure to comply with the requirement of the state citizenship,
  - lack of necessary health capacity (long-term incapacity for the exercise of the service, occupational disease or exposition to such disease),
  - organisational and economical measures the consequence of which may result in reducing the number of civil servants,
  - a civil servant fails to carry out the service properly as follows from the two consecutive service evaluations,
  - a civil servant was taken into custody on the ground of being prosecuted and the term of custody exceeds 3 years,
  - failure to comply with another legitimate requirement for the exercise of the service without the fault of the relevant authority,
  - expiration of the period of 12 months during which the servant was off duty;
- upon the decision of the civil service body under the written application of a civil servant in accordance with Section 56 of the Civil Service Act;
- implied in law, if the facts arise according to Section 57 of the Civil Service Act:
  - final sentence for committing an intentional offence or final sentence to imprisonment,
  - incapacitating or limiting the legal capacity,
  - final disciplinary punishment (removal from service relationship),
  - 31 December of a calendar year in which the civil servant reaches the age of 65 years,
  - commencement of public office the exercise of which is incompatible with the employment of a civil servant.

Service relationship for the members of the police force of the Czech Republic (but also for other members of the security force) is currently governed by the Act on Service of the Members of the Police Force of the Czech Republic which stipulates the following ways for terminating the employment relationship (Section 103):

- termination within the probation period,
- removal (upon the request of a policeman),
- dismissal,
- deprivation of the rank,
- passage of the time agreed,
- death of a policeman.

With the effect as from 1 January 2007 the service relationships of the members of the security force will be governed by Act No.361/2003 Coll., on the Members of the Security Force Service that in its Section 41 establishes the following ways for its termination:

- the passage of a definite period,
- dismissal due to statutory grounds (one of them can be seen in the application of a member),
- death or the declaration of being dead,
- upon the dates of 31 December of a calendar year in which the member reaches the age of 65 years.

The last group which is subject to the special legal regulation comprises the members of the armed forces whose service relationship is regulated by Act No.221/1999 Coll. In compliance with the provision of Section 18 the service relationship terminates:

- with the passage of the time stated,
- upon dismissal due to established reasons (one of them may be seen in the application of an officer),
- deprivation of the rank,
- decision of court on the deprivation of a military rank,
- death of an officer or declaration of being dead,
- loss of the citizenship of the Czech Republic,
- loss of capability to work,
- incapacitating or limiting the legal capacity,
- termination within the probation period.

While determining the sources of the legal regulation we have mentioned that the group of employment relationships where the Labour Code is applied subsidiarily, the special legal regulation does not include, more or less, any exceptions from the general legal regulation. The special legislation as mentioned above does not regulate any variances which mean in relation to subsidiarity that the general legal regulation for terminating an employment relationship is applied even for terminating all these employment relationships. The only variance can be seen in the establishment for the office of the Public Defender of Rights where Act No.349/1999 Coll., on the Public Defender of Rights, establishes, in its provision of Section 6, special ways for terminating this public office:

- passage of the term of office,
- legal force of the decision sentencing the person for committing an offence,
- loss of the eligibility to be elected to the Senate of the Parliament of the Czech Republic,
- the exercise of office in public administration being incompatible with the exercise of the office of the Public Defender of Rights,
- declaration of resigning the office of the Public Defender of Rights.

### 3. COMPLIANCE WITH ILO CONVENTION 158 – 1982

Convention 158 – 1982 (hereinafter “Convention”) of International Labor Organization (hereinafter “ILO”) regulates termination of employment relationship by the employer and concerns all fields of economic activities and all employed persons, with the possibility of a member state excluding some groups of people from its application. The Czech Republic has not ratified this Convention yet.

The basic requirement for termination of employment by the employer is the existence of a valid reason for such termination connected with the capacity or conduct of the employee or based on the operational requirements of enterprise, institution or office (Article 4, Convention). This requirement is met by the Czech legal regulation in the case of notice of termination of employment and instant termination of employment by the employer. Reasons for notice of termination of employment by the employer are established in Section 46, Para 1, Labor Code, and reasons for instant termination of employment by the employer are stipulated in Section 53, Para 1, Labor Code. No reasons are required in the case of termination of employment relationship in probationary period, which corresponds to the possible exclusion from applying the Convention. However, reasons are not required in the case of notice of termination of subsidiary employment by the employer, either – this case might be included in the exception established by Article 2, Para 1 (c), Convention, but there is not a complete agreement here, yet. On the other hand, it is necessary to consider the special character of subsidiary employment relationship as mentioned above.

Articles 5 and 6, Convention, establish facts that cannot be considered legal reasons for termination of employment relationship by the employer. In my opinion, the Czech legal regulation fully complies with this requirement. The implementation of this provision is ensured by:

- an exhaustive list of reasons for notice of termination of employment relationship and instant termination by the employer (Section 46, Para 1, Section 53, Para 1, Labor Code),
- establishing prohibition of notice (Sections 48 – 49, Labor Code) and prohibition of instant termination (Section 53, Para 3, Labor Code),
- establishing prohibition of discrimination as the basic interpretation rule in Article 3, Para 1, Charter of Fundamental Rights and Freedoms, and Section 1, Para 4, Labor Code.

The Czech legal regulation does not reflect fully the requirement established in Article 7, Convention – it does not expressly regulate the opportunity of the employee to defend himself against the allegations made before the termination of employment occurs due to a reason consisting in his conduct or acts.

The Czech legal regulation fully implements the requirement of protection of the employee against unlawful termination of employment (Articles 8 and 9, Convention). The employee has an opportunity to challenge the notice as well as the instant termination of employment relationship by the employer and to bring an action within a stipulated time-limit in a general court (Section 64, Labor Code). From the viewpoint of evidence needed for the court to determine invalidity the variant established in Article 9, Para 2b), Convention, is used and general courts have authorization to examine the existence of organizational reasons on the part of the employer.

Unlike the requirement established in Article 10, Convention, general courts only determine that a notice of termination of employment relationship or an instant termination of employment relationship by the employer are invalid but they do not decide about a renewal

of employment relationship. Claims connected with invalid severance of employment relationship by the employer are regulated in Section 61, Labor Code, and the continuing of the employment relationship is at the discretion of the employee.

The requirement of Article 11 to a reasonable period of notice of termination of employment relationship is met by Section 45, Labor Code, establishing length of notice. An exception is instant termination of employment relationship when the employment relationship is terminated instantly at the moment when the document is served on the employee, which complies with the above mentioned provision allowing for the period of notice not being kept if the employee seriously misconducts and the employer cannot be urged to employ the employee during the period of notice.

Upon termination of employment for reasons on the part of the employer the employee is entitled to compensation, and unemployment benefit and participation in pension scheme are also regulated (old age and disability pensions). Deprivation of entitlement to unemployment benefit is related to a breach of work discipline as a reason for severance of employment relationship by the employer. The cited regulation fully corresponds to the provision of Article 12, Convention.

The Czech legal regulation of termination of employment relationship by the employer also fully meets the requirements established in Articles 13 and 14, Convention (discussions with representatives of employees and duty to inform the respective administrative bodies).

The preconditions of termination of employment relationship by the employer are also dealt with in the recommendation of ILO No 166/1982 (hereinafter “recommendation”). The recommendation complements some other preconditions that should be stated gradually in the regulation of termination of employment relationship by the employer.

In Article 3 of the recommendation a requirement is stated for a special protection of a fixed-term employment relationship. The Czech legal regulation includes the possibility mentioned in Para 2b) and c), Article 3, and is detailed in Section 30, Labor Code (see above).

The recommendation increases the number of facts that cannot be used as a reason for termination of employment relationship by the employer (pension age, compulsory military service or other civic duties – Article 5 of the recommendation). The Czech legal regulation does not include pension age among notice reasons pursuant to Section 46, Para 1, Labor Code. If such a reason was formally covered by another notice reason it would be a discrimination on the grounds of age (Section 1, Para 4, Labor Code). For the period of military service the employee is in the so-called protection period where there is a prohibition of notice with certain exceptions (Sections 48 – 49, Labor Code).

In my opinion, the Czech legal regulation also corresponds to requirements established in Articles 7- 13 of the recommendation (the procedure preceding the moment when the respective legal act is made) with the exception of Article 9. The Czech legal regulation does not expressly reflect Article 7, Convention, related to Article 9. The employee – a trade union member may use free legal aid and may ask the trade union to represent him in court (Section 26, Civil Procedure Code).

For the time being, the provision of Article 14 of the recommendation is not fulfilled. Protection of the employee against termination of employment relationship by the employer is only possible by the court. The employees are informed about the possibility of defense against termination of employment from the part of the employer especially by trade unions but it is also monitored by administrative bodies (job offices).

The provision of Article 16 of the recommendation is reflected only in part – the employee is always entitled to a specified leave from work to seek another job (with the exception of instant termination of employment relationship) but he is entitled to reimbursement of wage only when the employment relationship was terminated due to organizational reasons on the part of the employer.

In the Czech legal regulation are additional provisions concerning termination of employment because of economical, technological, structural or similar reasons reflected predominantly in the Labor Code itself and in Act No 435/2004 Coll. on Employment. However, the legal regulation does not state criteria for the choice of employees with whom the employment relationship will be terminated because of these reasons, or preferential hiring of the dismissed employee back by the original employer.

On the basis of a factual analysis of the individual manners of termination of employment relationship by the employer we may be state that the Czech legal regulation complies predominantly with requirements established for termination of employment relationship by the employer even if the Convention is not binding for the Czech Republic. However, the small differences do not lower protection of employees under the level required by the Convention in the case of termination of employment relationship by the employer.



#### **4. ARRANGEMENTS FOR REGULATING THE TERMINATION OF AN EMPLOYMENT RELATIONSHIP**

The legislative process is being currently in progress in the Czech Republic and it should result in the adoption of the amended Labour Code. This process has not been completed yet but the proposed legislative drafts indicate some changes in the legal regulation for terminating an employment relationship.

If we look at the proposed legal regulation in general, we may assume that this proposed legal regulation, as far as its content is concerned, will not be quite “new” in comparison with the existing legal regulation.

The draft of the Labour Code includes all existing ways for termination an employment relationship. The set of all existing ways for terminating an employment relationship is only supplemented by a special regulation for terminating an employment relationship in which a natural person – a sole trader – can be referred to as an employer. The employment relationship terminates upon the death of an employer – natural person – if, in accordance with the special regulation, the trade cannot be carried out further. Moreover, in comparison with the existing legal regulation, even the termination of an employment relationship of an alien or stateless person is included referring to the expiration of a period for which the work permit has been issued.

The proposed legal regulation also retains the existing legal forms of individual ways for terminating an employment relationship with some small changes which do not, however, affect the essence of these institutes.

## CONCLUSION

The termination of an employment relationship has been analysed in detail in preceding chapters in all its forms. The analysis carried out may result in making some principal evaluating conclusions.

The legal regulation for terminating an employment relationship guarantees the right to the stability of employment for an employee, what is fully in compliance with the conception of the right to work as laid down, first of all, in the revised European Social Charter.

The legal regulation also guarantees the requirement for the existence of grounds for terminating an employment relationship by an employer with the exception of the institute for terminating an employment relationship within the probation period, which does not have to be justified. This exception, however, is in accord with the exception admitted in the ILO Convention No.158 of 1982.

The legal regulation also guarantees the expressed prohibition of forced labour both in international and national regulations. An employee willing to terminate an employment relationship by notice unilaterally (the most frequent way) is not restricted by any reasons or conditions. The termination of an employment relationship depends exclusively on one's will.

The legal regulation also guarantees the right of an employee to resist the invalid or discriminating termination of an employment relationship. It should be noted, however, that the decision-making procedure for void employment termination disputes is fairly long. The lengthy character of judicial proceedings arises especially from the fact that labour arbitration falls within the jurisdiction of courts without specialisation. The courts having general jurisdiction are mostly overwhelmed with the excessive amount of property and other cases and therefore the labour dispute decision is reached long after the dispute arose. The situation described is, however, outside the scope of labour regulation being assessed and it depends on the overall development of the Czech justice.

The legal regulation creates a possibility for an employee to abide in the employment relationship after an employer terminated the employment relationship in an invalid way. Continuing the employment relationship, however, is left at the will of an employee and at his disposition. If an employee is not willing to abide in the employment relationship further, then this relationship terminates even despite a void legal act of an employer. A certain form of a sanction against an employer (satisfaction for an employee) for void terminating an employment relationship is imposed only in the case of the void and immediate termination of an employment relationship, not in general.

To sum up, in my opinion, the Czech legal regulation for terminating an employment relationship may be evaluated as a positive one, as the regulation meeting generally accepted rules expressed both in international instruments and EC law.

## **SUMMARY**

### **1. Sources of law**

#### **1. Constitutional status of the rules on the right to work**

The right to work is provided for in Article 26, Charter of Fundamental Rights and Freedoms, which states that: “Everyone has the right to gain means for their necessities by work.”

See p. 2

#### **2. International agreements and conventions**

On 9 October 2000 the Czech Republic ratified the 1971 ILO Convention No 135 concerning Protection and Facilities to be afforded to Workers’ Representatives in the Undertaking. The Conventions No 145, 151 and 158 have not been ratified yet.

The compliance with the Convention No 158 is analyzed in more detail in Point 3 p. 70.

#### **3. Sources of law and their hierarchy**

(Point 1 p. 4)

#### **4. The role of judge-made law and custom**

Courts do not have the law-making power but their decisions are important for the application and interpretation of legal regulations. It is only the Constitutional Court that has the power of the “negative law-maker”, i.e. it may abolish a law or a part of it if it is not in keeping with constitutional principles.

### **2. Scope of rules governing the termination of an employment relationship, special arrangements**

#### **1. Ways of terminating an employment relationship (Point 2 p.6)**

#### **2. Exemptions or specific requirements for certain employers or sectors (Point 1 s.4)**

#### **3. Exemptions or special requirements for certain types of contracts**

There is a special regulation for termination of subsidiary employment relationship (Point 2.6.1., p.51)

#### **4. Exemptions or special requirements for certain categories of employer**

With the exception of collective dismissal there are no different requirements for employers.

#### **5. Exemptions or special requirements for certain categories of employees**

- a special regulation is established for employees in probation period (Point 2. 4. p. 40)
- top managers may be removed from their functions without stating a reason. Their employment relationship is not terminated by the removal. The employer is obliged to offer them another job corresponding with their qualification or another suitable job. If he does not have such a job or the removed top employee refuses it he becomes redundant and may be dismissed. Otherwise the general regulation applies.

### **3.1. Mutual agreement**

The agreement on severance of employment relationship is expressly regulated – point 2.1.p. 6.

### **1. Substantive conditions** (Point 2.1.1. p. 7)

### **2. Procedural requirements** (Point 2.1.1. p. 9)

### **3. Effects of the agreement**

The employee is entitled to **severance payment** if the agreement was made for reasons on the part of the employer (Point 2.7.3 p. 56)

### **Unemployment benefits**

It is provided pursuant to Act No 435/2004 Coll. on Employment, and one is entitled to it regardless of the manner of termination of employment relationship if the set preconditions are met:

- the job applicant had in the past 3 years before being registered as a job applicant a paid employment for 12 months at least and on such a scale that he participated in sickness insurance scheme;
- no job has been found for the job applicant;
- the job applicant has applied for unemployment benefit
- the job applicant does not have retirement pension.

### **Retirement pensions**

Termination of employment relationship does not affect in any way the entitlement to retirement pension.

### **Sickness insurance**

Participation in sickness insurance scheme is ended by termination of employment relationship.

### **4. Remedies** (Point 2.9. p. 59, point 2.9.3 p.65)

### **5. Vitiating factors** (Point 2.9 p. 59)

### **6. Penalties**

There is no special regulation.

### **7. Collective agreements**

Collective agreements cannot regulate termination of employment relationship (Point 1. p. 5)

### **8. Relation to other forms of termination**

The agreement on severance of employment relationship is a separate manner of termination of employment relationship and excludes the other manners of termination of employment relationship.

## **3.2. Termination otherwise than at the wish of the parties**

### **1. Grounds for a contract to come to an end by operation of law**

- expiry of the period of a fixed-term employment relationship (Point 2.5.1, p. 43)
- death of the employee (Point 2.5.3, p. 50)
- decision of a respective authority (Point 2.5.2, p. 48)

## **2. Procedural requirements (Point 2.5. p. 43)**

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

There is no entitlement to **severance payment** in the case of these manners of termination of employment relationship.

#### **Unemployment benefits**

It is provided pursuant to Act No 435/2004 Coll. on Employment, and there is an entitlement to it regardless of the manner of termination of employment relationship if the set preconditions are met:

- the job applicant had in the past 3 years before being registered as a job applicant a paid employment for 12 months at least and on such a scale that he participated in sickness insurance;
- no job has been found for the job applicant;
- the job applicant has applied for unemployment benefit
- the job applicant does not have retirement pension.

#### **Retirement pensions**

Termination of employment relationship does not affect in any way the entitlement to retirement pension.

#### **Sickness insurance**

Participation in sickness insurance is ended by termination of employment relationship.

## **4. Remedies**

A special regulation of judicial protection is provided for a fixed-term employment relationship (Point 2.51, p. 43). The general regulation applies to the other manners of termination of employment relationship, i.e. due to objective legal facts and authorities' decisions (Point 2.9,4 p. 65).

## **5. Penalties**

There is no special regulation.

## **6. Collective agreements**

Collective agreements cannot regulate termination of employment relationship (Point 1. p. 5).

### **3.3 Dismissals in Member States: Overview**

The employer may dismiss the employee unilaterally by:

- giving notice (Point 2.2 p. 10)
- instant termination (Point 2.3 p. 33)
- termination within probation period (Point 2.4 p. 40)

#### **3.3.1 Dismissal contrary to certain specified rights or civil liberties**

The reasons for dismissing an employee are fully listed for both notice and instant termination. An employee cannot be dismissed for any other reason. The only exception is termination of employment relationship within probation period where no reasons are established by the law. Protection of fundamental rights and civil liberties is ensured by the provision of prohibition of discrimination for all basic discriminatory reasons. The generally established prohibition of discrimination must be applied to all manners of termination of employment relationship.

There is a special provision prohibiting notice for some special cases (Point 2.2.3 p. 27) and a provision prohibiting instant termination of employment relationship (Point 2.3.2 p. 38).

Protection against dismissal contravening fundamental rights and civil liberties is provided by courts on the basis of a lawsuit for determining invalidity of severance of employment relationship (Point 2.9 p. 59).

### **3.3.2 Dismissal on “disciplinary” grounds**

#### **1. Substantive conditions**

- notice for breaching employee’s discipline (Point 2.2.3 p. 23)
- instant termination of employment relationship (Point 2.3.2 p. 36)

**2. Procedural requirements** (Point 2.2. p. 10, point 2.2.1. p. 11, point 2.2.3. p. 26, point 2.3. p. 33, point 2.3.1. p. 35, point 2.3.2. p. 36)

#### **3. Effects of dismissal**

There is no entitlement to **severance pay**.

#### **Unemployment benefits**

It is provided pursuant to Act No 435/2004 Coll. on Employment, and there is an entitlement to it regardless of the manner of termination of employment relationship if the set preconditions are met:

- the job applicant had in the past 3 years before being registered as a job applicant a paid employment for 12 months at least and on such a scale that he participated in sickness insurance scheme;
- no job has been found for the job applicant;
- the job applicant has applied for unemployment benefit
- the job applicant does not have retirement pension.

#### **Retirement pensions**

Termination of employment relationship does not affect in any way the entitlement to retirement pension.

#### **Sickness insurance**

Participation in sickness insurance scheme is ended by termination of employment relationship.

**4. Remedies** (Point 2.9 p. 59, point 2.9.1. p. 62)

**5. Suspension of the effects of the dismissal** (Point 2.9 p. 59, point 2.9.1. p. 62)

**6. Restoration of employment** (Point 2.9.1 p. 63)

#### **7. Penalties**

There is no special regulation.

#### **8. Collective agreements**

Collective agreements cannot regulate termination of employment relationship (Point 1 p. 5).

### **3.3.3 Dismissal at the initiative of the employer for reasons related to the capacities or personal attributes of the employee, excluding those related to misconduct**

**1. Substantive conditions** (Point 2.2. p. 10, point 2.2.1. p. 11, point 2.2.3 p. 21-23)

**2. Procedural requirements** (Point 2.2. p. 10, point 2.2.1 p. 11, point 2.2.3 p. 26)

#### **3. Effects of the agreement**

There is an entitlement to severance pay only if the notice is given because of long-term health incapacity (Point 2.7.3. p. 57).

#### **Unemployment benefits**

It is provided pursuant to Act No 435/2004 Coll. on Employment, and there is an entitlement to it regardless of the manner of termination of employment relationship if the set preconditions are met:

- the job applicant had in the past 3 years before being registered as a job applicant a paid employment for 12 months at least and on such a scale that he participated in sickness insurance scheme;
- no job has been found for the job applicant;
- the job applicant has applied for unemployment benefit
- the job applicant does not have retirement pension.

#### **Retirement pensions**

Termination of employment relationship does not affect in any way the entitlement to retirement pension.

#### **Sickness insurance**

Participation in sickness insurance scheme is ended by termination of employment relationship.

**4. Remedies** (Point 2.9 p. 59, point 2.9.1 p. 62)

**5. Suspension of the effects of the dismissal** (Point 2.9 p. 59, point 2.9.1 p. 62)

**6. Restoration of employment** (Point 2.9.1 p. 63)

#### **7. Penalties**

There is no special regulation.

#### **8. Collective agreements**

Collective agreements cannot regulate termination of employment relationship (Point 1 p. 5).

### **3.3.4 Dismissal for economic reasons**

**1. Substantive conditions** (Point 2.2 p. 10, point 2.2.1 p. 11, point 2.2.3 p. 18-21)

**2. Procedural requirements** (Point 2.2 p.10, point 2.2.1 p. 11, point 2.2.3 p. 26)

**3. Specific requirements for collective dismissals** (Point 2.2.5 p. 32)

#### **4. Effects of the dismissal**

There is an entitlement to **severance pay** (Point 2.7.3 p. 56).

#### **Unemployment benefits**

It is provided pursuant to Act No 435/2004 Coll. on Employment, and there is an entitlement to it regardless of the manner of termination of employment relationship if the set preconditions are met:

- the job applicant had in the past 3 years before being registered as a job applicant a paid employment for 12 months at least and on such a scale that he participated in sickness insurance scheme;
- no job has been found for the job applicant;
- the job applicant has applied for unemployment benefit
- the job applicant does not have retirement pension.

#### **Retirement pensions**

Termination of employment relationship does not affect in any way the entitlement to retirement pension.

#### **Sickness insurance**

Participation in sickness insurance scheme is ended by termination of employment relationship.

#### **5. Remedies** (Point 2.9 p. 59, point 2.9.1 p. 62)

#### **6. Suspension of the effects of the dismissal** (Point 2.9 p. 59, point 2.9.1 p. 62)

#### **7. Restoration of employment** (Point 2.9.1 p. 63)

#### **8. Penalties**

For breaching legal duties in connection with termination of employment relationship such as

- not informing the job office
- not discussing the matter with trade union representatives

the employer may be punished by penalties amounting to 1 million CZK pursuant to Act 435/2004 Coll.

#### **9. Collective agreements**

Collective agreements can regulate the amount of severance pay (Point 2.7.3 p. 57)

#### **10. Special arrangements**

##### **a) Insolvency**

The declaration of bankruptcy itself does not cause termination of employment relationship. Canceling an enterprise with liquidation is an established reason for giving notice (Point 2.2.3 p. 18).

##### **b) Transfer of the firm**

Pursuant to the Czech legal regulation the transfer of a business does not affect the duration of employment relationship. The assuming person enters into all rights and duties of the transferring person. Transfer of business cannot then be used as a reason for giving notice. If the assuming person wants to reduce the number of the employees he has to apply the general rules for giving notice for reasons on the part of the employer (Point 2.2.3 p. 18).



### **3.4 Resignation of the employee**

#### **1. Substantive conditions**

The employee may terminate employment relationship by

- giving notice (Point 2.2 p. 10, point 2.2.1 p. 11, point 2.2.2 p. 15)
- termination within probation period (Point 2.4 p. 40)

#### **2. Desertion of the post**

Desertion of the post is not a legal fact leading to termination of employment relationship.

#### **3. Procedural requirements** (Point 2.2. p. 10, point 2.2.1 p. 11, point 2.4 p. 40)

#### **3. Effects of the resignation**

There is no entitlement to **severance pay**.

#### **Unemployment benefit**

It is provided pursuant to Act No 435/2004 Coll. on Employment, and there is an entitlement to it regardless of the manner of termination of employment relationship if the set preconditions are met:

- the job applicant had in the past 3 years before being registered as a job applicant a paid employment for 12 months at least and on such a scale that he participated in sickness insurance scheme;
- no job has been found for the job applicant;
- the job applicant has applied for unemployment benefit
- the job applicant does not have retirement pension.

#### **Retirement pensions**

Termination of employment relationship does not affect in any way the entitlement to retirement pension.

#### **Sickness insurance**

Participation in sickness insurance scheme is ended by termination of employment relationship.

#### **5. Remedies** (Point 2.9 p. 59, point 2.9.2 p. 64)

#### **6. Compensation to the employer** (Point 2.9.2 p. 64)

#### **7. “Contrived” resignations**

There is no regulation.

#### **8. Resignation for proper cause**

This manner of termination of employment relationship may include, in my opinion, instant termination of employment relationship (Point 2.3 p. 33, point 2.3.1 p. 35, point 2.3.3 p. 38).

#### **9. Collective agreements**

Collective agreements cannot regulate termination of employment relationship (Point 1 p. 5).

## **4. General questions relating to all forms of termination of employment relationship**

### **1. Non-competition agreements**

Pursuant to Section 29a, Labor Code, it is possible to agree on an anti-competition clause which must fulfill the following requirements:

- a written form the absence of which is sanctioned by invalidity,
- the duration of the obligation for at least 1 year since the termination of employment relationship,
- the obligation of the employee that he will not perform for another employer or for himself an activity that would be the object of activities of the employer or another activity that would be competitive with the employer's business,
- the obligation of the employer to provide the employee with an adequate financial settlement amounting at least to the average monthly earning for each month of the duration of the employee's obligation,
- the possibility of agreeing on an adequate financial amount as a sanction which will be paid by the employee in case of he did not fulfilled his obligation to refrain from competitive activities. The financial amount must be adequate to the nature and importance of the circumstances in which the agreement is made.

Section 29a, Para 3, Labor Code, specifies in more detail conditions under which the agreement on competitive clause may be made. The agreement may be made if it can be fairly required from the employee with regard to the nature of information, knowledge, familiarity with work and technological processes that he gained in the course of his employment relationship with the employer and the use of which could endanger the employer. The agreement cannot be made if the employment contract includes probation period. In such a case the agreement on competitive clause cannot be made until the expiry of the probation period.

The agreement on non-competition clause ends by:

- the expiry of the period for which it was made,
- the payment of the financial amount as a sanction for violating the obligation to refrain from competitive activities,
- the employer's backing out of the agreement on competition clause. However, the employer may back out of the agreement on competition clause only while the employment relationship lasts. Regarding the fact that Section 29a, Para 5, does not establish any other special regulations for backing out the general regulation of Section 245, Labor Code, applies here, too,
- the employee's notice. The employee may revoke the agreement on competition clause only when the employer has not paid him the financial settlement (its part) for the respective month in 15 days at the latest after its maturity. In the case of notice the agreement on competition clause ends on the first day of the calendar month following the service of this notice.

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

Under the Czech legal regulation such an agreement cannot be made. The agreement would be invalid because the employee waives his rights in advance by such an agreement (Section 242, Para 1c, Labor Code).

### **3. The issuing of a reference (Point 2.7.2 p. 54)**

#### **4. Full and final settlement**

The agreement on full and final settlement is not expressly regulated. If such an agreement were made and the employee waived his rights in advance by that (e.g. his right to damages) the agreement would be invalid (Section 242, Para 1c, Labor Code).

## **Annotation**

The study report deals with the termination of an employment in the legal regulation of the Czech Republic.

The analysis is based on defining the legal framework for the institute of the termination of an employment expressed in international and European instruments in which the fundamental social rights and freedoms are laid down. Labour Code is the principal source of the national regulation; however the other legal regulations influence the termination of some special labour relationships.

The main attention is concentrated on the analysis of the individual forms of the termination of the labour relationship, namely

- subjective legal facts made by the parties to the employment relationship
  - agreement to terminate the employment relationship as a bilateral legal act,
  - notice of termination of the employment relationship as a unilateral legal act by an employee or an employer,
  - instant termination of the employment relationship as a unilateral act by an employee or an employer
  - termination of the employment relationship during the probationary period as a unilateral act by an employee or an employer;
- by virtue of official decisions
  - an enforceable decision of a competent authority for the withdrawal of a residence permit,
  - a final decision of court on expulsion;
- objective legal facts
  - upon expiration of a fixed-term employment relationship,
  - upon the death of an employee.

Further the study report deals with the court protection of the parties against the termination of the labour relationship and with the position of trade unions in the process of terminating this relation.

The final parts of the study report appraise the Czech legal regulation from the point of view the ILO Convention No. 158 (1982) and deal with the prepared changes of this regulation. The conclusion based on the made analysis is that the Czech legal regulation of the termination of an employment corresponds to the principles laid down both in international and European instrument.

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## Table of Contents

Introduction	2
1. Sources of the legal regulation	4
2. General regulation governing the termination of an employment relationship	6
2.1. An agreement to terminate the employment relationship	6
2.1.1. Essentials relating to subject-matter in an agreement on terminating the employment relationship	7
2.1.2. Origin and formal essentials of an agreement on terminating the employment relationship	9
2.1.3. Summary	10
2.2. Notice of termination of an employment relationship	10
2.2.1. General substantive stipulations for the validity of notice	11
2.2.2. Notice given by an employee	15
2.2.3. Special substantive conditions of notice given by an employer	16
2.2.4. Obligation to assist in seeking other suitable employment	31
2.2.5. Collective redundancies (large-scale dismissals)	32
2.3. Instant termination of employment	33
2.3.1. General substantive preconditions of instant termination of employment	35
2.3.2. Grounds for instant termination of employment from the part of the employer	36
2.3.3. Reasons for instant termination of employment from the part of the employee	38
2.4. Termination of employment relationship in probationary period	40
2.4.1. Formal requirements of termination of employment relationship in probationary period	40
2.4.2. Substantive preconditions of termination of employment relationship in probationary period	41
2.5. Further forms of the termination of an employment relationship	43
2.5.1. Termination of a fixed-term employment relationship	43
2.5.2. Termination of employment relationship upon a decision of the authorities	48
2.5.3. Termination of employment relationship by death of the employee	50
2.6. Specialities of termination of some kinds of employment relationship	51
2.6.1. Subsidiary employment relationship	51
2.6.2. Employment relationship for shorter working hours	53
2.7. Other entitlements linked with employment termination	54
2.7.1. Leave from work for finding a job	54
2.7.2. Employer's references and working paper	54
2.7.3. Severance payment	56
2.8. Participation of trade unions in termination of employment relationship	58
2.9. Judicial protection upon termination of employment relationship	59
2.9.1. Invalid severance of employment relationship by the employer	62
2.9.2. Invalid severance of employment relationship by the employee	64
2.9.3. Claims linked with invalid agreement on severance of employment relationship	65
2.9.4. Judicial protection in other ways of termination of employment relationship	65
2.10. A special legal regulation for terminating an employment relationship	66

3. Compliance with ILO convention No 158, 1982	70
4. Arrangements for regulating the termination of an employment relationship	73
Conclusion	74
Summary	75
Annotation	84
List of the literature	85
Table of contents	86