

Restatement of Labour Law in Europe Volume III: Dismissal Protection

Waas

2023

ISBN 978-3-406-78897-0

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relationship with notice,³ and the employer is entitled to dismiss (*да уволни*) the employee in the event of downsizing of staff, reduction in the volume of work, etc.⁴

The legal framework for terminations of the employment relationship is based on two main principles (*принципи*):

- (1) *freedom of termination (прекратяване) of the employment relationship*. This corresponds to the freedom of its establishment. This principle applies to terminations of the employment relationship with notice by the employee (*работника или служителя*)⁵ as well as to terminations thereof by mutual consent of both parties.⁶ The employer (*работодателят*) can only apply this principle to an additional employment contract (ie a contract that an employee signs with the same or with another employer to perform work in his or her free time) is terminated with notice;⁷
- (2) *the legality of the grounds for termination of the employment relationship*. An employment relationship can only be terminated on grounds that are explicitly provided for in law. It applies to unilateral (*едностранно*) terminations of the employment contract by the employer (dismissal) on general grounds, to terminations of fixed-term employment relationships on specific grounds and to unilateral terminations by the employee without notice. The aim is to enshrine protection of employment in labour law,⁸ that is, the right of the employee to work may only be limited in cases determined by law.

The role of case law (*съдебната практика*) in Bulgaria is of little legal significance. Only the interpretative rulings of the Supreme Court of Cassation (*Върховния касационен съд*) (hereinafter SCC; before 1998 Supreme Court – SC) to standardize the application of certain statutory rules are binding on the courts (*съдилищата*). They are issued on the basis of Article 290 of the Civil Procedure Code. Not many are issued in the field of labour law (no more than two or three annually).

The individual employment contract (*индивидуалният трудов договор*) according to Bulgarian labour law (*трудова право*) may only establish rules of conduct that are not regulated in mandatory provisions of the law and that are more favourable for the employee than those established in collective agreements (*колективните трудови договори*).⁹ In short, the rules for terminations of the employment relationship are explicitly established by imperative provisions of the law, ie the parties have no right to diverge from these provisions. They are, however, allowed to determine a longer period of notice (*предизвестие*) than the one legally prescribed (30 days).¹⁰

The material scope of collective agreements under Bulgarian law is defined in Article 50 LC. It regulates aspects of the employment relationship that are not governed by mandatory provisions of the law; collective agreements may introduce rules that are more favourable for the employee than those established in the legislative framework. Since the legal framework for terminations of the employment relationship is binding, collective agreements have limited options. The Labour Code limits these options to:

- (1) *determining the period of notice*.¹¹ This is possible based on explicit grounds for dismissal (for example, due to the closure of the enterprise, downsizing of staff, etc.). In these cases, the collective agreement may provide for the notice period to be determined on the basis of the employee's length of service (*трудова стаж*);

³ Art 326 LC.

⁴ Art 328 LC.

⁵ Art 326 LC.

⁶ Arts 325, para 1, item 1 and 331 LC.

⁷ Art 334 LC.

⁸ Art 16 of the Constitution; Art 1, para 3 LC.

⁹ Art 66, para 2 LC.

¹⁰ Art 326, para 2, first sentence LC.

¹¹ Art 326, para 2 LC.

- (2) *establishment of supplementary protection upon dismissal*.¹² The collective agreement may provide that the employer is required to obtain the prior consent of the representative trade union in the enterprise in the event of downsizing of staff or a reduction in the volume of work.

II. Types of Giving Notice

- 14 Bulgarian legislation does not provide for a special warning (*предупреждение*) of dismissal to be issued. The notice represents such warning in case of terminations with notice, but upon its expiry, the legal relationship shall be terminated without the need for any special declaration of intent.¹³ The only purpose of documenting the termination with a dismissal order by the employer is to state the facts.
- 15 Either party may terminate the employment relationship with notice.
- 16 The employer may only terminate the employment relationship unilaterally with notice on specific grounds provided by Article 328 LC. In the dismissal order (*заповедта за уволнение*), the employer must indicate the specific ground for dismissal.
- 17 Either party to the employment relationship may unilaterally terminate the contract without notice (*без предизвестие*). In this case, however, the grounds for the termination are specifically established for both the employer and the employee. The grounds for dismissal without notice are discussed below.¹⁴

III. Termination of Specific Employment Relationships

- 18 The rules on terminations of employment contracts under Bulgarian law apply to all employment relationships. The type of employment contract only plays a role in three scenarios:
- (1) *Specific grounds* for terminating a fixed-term employment contract (*срочните трудови договори*); for employment contracts in the state administration (*трудовете договори в държавната администрация*); for employment relationships established by election (*трудовете правоотношения въз основа на избор*).
- (2) *The notice period* for the termination of fixed-term employment relationships differs from that for employment relationships of indefinite duration (*трудовете правоотношения за неопределено време*).
- (3) An employment contract for additional work (*трудовият договор за допълнителен труд*) may be terminated by either party with a 15-day notice, without the need to provide any grounds.¹⁵

1. Probation Contract

- 19 The probation contract (*Договор за изпитване*) is regulated in Articles 70–71 LC. Its purpose is to verify the employee's suitability to perform a particular job for a particular employer or whether the employee is suitable for the particular job under the given specific conditions; a probation contract may be concluded in the interests of both the employer and the employee.¹⁶ The term of the probation period established in

¹² Art 333, para 4 LC.

¹³ Art 335, para 2, item 1 LC.

¹⁴ See s D.II. below.

¹⁵ Art 334 LC.

¹⁶ For this contract, see Ж Сталев, 'Трудовият договор за изпитване' (1-2 Известия на Главната дирекция на труда София, 1947) 28--44; К Средкова, *Трудово право. Специална част. Дял I*.

the law is up to a maximum of six months. The specific term shall be determined by mutual agreement of the parties.

Probation contracts may be terminated:

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- (1) *Unilaterally by the party to whose benefit it has been concluded.*¹⁷ A unilateral written statement must be issued prior to the expiry of the probation period without notice. If the contract is not terminated on this ground, an irrebuttable presumption will have been established that the probation period was successfully completed and that an employment relationship has been established.¹⁸ It may be concluded for a fixed or for an indefinite period, agreed by the parties.
- (2) *On all grounds for terminations of employment relationships* in general, with notice or without notice. In these cases, the standard rules apply.

2. Fixed-term Employment

Bulgarian legislation regulates different types of fixed-term employment contracts,¹⁹ 21 namely fixed-term employment contracts (*трудови договори с определен срок*);²⁰ employment contracts for the completion of a specific task (*трудови договори до завършване на определена работа*);²¹ employment contracts for temporary replacements (*трудови договори за заместване*);²² employment contracts for positions filled following a competitive examination or election (*трудови договори до заемане на длъжността въз основа на конкурс или избор*);²³ employment contracts for a certain term of office (*трудови договори за определен мандат*);²⁴ employment contracts for long-term missions (*трудови договори за дългосрочна командировка*);²⁵ employment contracts for work on particular days of the month (*трудови договори за работа през определени дни от месеца*);²⁶ short-term seasonal farm employment contracts (*трудови договори за краткотрайна сезонна селскостопанска работа*);²⁷ employment contracts for on-the-job training (*трудови договори за обучение по време на работа*);²⁸ employment contracts for traineeship (*трудови договори за стажуване*).²⁹

Temporary employment contracts may be terminated on all grounds on which 22 employment contracts of indefinite period.

Fixed-term contracts can be terminated also for specific reasons: 23

- (1) *Specific grounds* for terminations that apply to terminations of all employment contracts. These grounds relate to the period of the contract³⁰ and apply to the following situations: upon *expiry of the agreed term* (*изтичане на срока*); upon *completion of the specified tasks* (*завършване на определената работа*); when the

Индивидуално трудово право (София, Университетско издателство Св. Климент Охридски, 2011) 78–79; В Мръчков, *Трудово право* 10. изд (София, Сиби, 2018) 244–247; В Мръчков, К Средкова, А Василев, Е Мингов, *Коментар на Кодекса на труда* 13. изд (София, Сиби, 2021) 232–240.

¹⁷ Art 71, para 1 LC.

¹⁸ Art 71, para 2 LC.

¹⁹ See Средкова, *Трудово право* (п 16) 72–78; Мръчков, *Трудово право* (п 16) 227–244; Мръчков, *Коментар* (п 16) 216–228.

²⁰ Art 68, para 1, item 1; Art 229, para 2; Art 234, para 3 LC.

²¹ Art 68, para 1, item 2 LC.

²² Art 68, para 1, item 3; Art 259 LC.

²³ Art 68, para 1, item 4 LC.

²⁴ Art 68, para 1, item 5 LC.

²⁵ Art 68, para 6 LC.

²⁶ Art 114 LC.

²⁷ Art 114a LC.

²⁸ Arts 230–233 LC.

²⁹ Arts 233a–233c LC.

³⁰ Art 325, para 1, items 4–8 and para 2 LC.

replaced employee returns to work (*завръщане на работа на замествания*); at the commencement of work of an employee who has been elected or who has passed a competitive examination (*постъпване на работа на избрания работник или служител или на спечелилия конкурса*). In these cases, the cessation of the relationship is not an actual dismissal but the expiry of the period for which the contract was concluded.

- (2) Varying *notice periods* for terminations of the employment contract.³¹ Unlike the standard case for employment relationships of indefinite duration for which the notice period is 30 days or longer and is decided by the parties, the notice period for fixed-term contracts is set at three months but cannot be longer than the remainder of the contract period.
- (3) *The amount of compensation* for unlawful terminations of the contract is determined by the actual damages, which are usually equal to the gross remuneration for the period of unemployment, but not more than the full period of the employment relationship.³² Under an employment contract of indefinite duration, compensation is due for the period of unemployment resulting from the unlawful termination of the contract, though not more than six months.

3. Other Categories of Employment Relationships

- 24 Other situations of terminations on specific grounds exist for certain categories of employment relationships.
- 25 Employment relationships established based on an election may be terminated without notice *by the competent electoral body – recall (отзоваване)*.³³
- 26 Among other grounds, employment contracts with a temporary work agency (*трудов договор с предприятие за временна работа*) may also be terminated upon *deregistration (прекратавяване на регистрацията) of the undertaking* providing temporary work.³⁴
- 27 Specific grounds for dismissal are also established for terminations of employment contracts with the state administration (*трудови договори в държавната администрация*).
- 28 A specific ground for dismissal without notice is provided for employment relationships with pedagogical specialists (*трудови правоотношения с педагогически специалисти*), namely a *conviction for an intentional offence prosecuted by public prosecution (осъждане за умишлено престъпление от общ характер)*.³⁵ Persons qualified as pedagogical specialists are indicated in Article 217 of the School and Preschool Education Act. They include teachers, directors and deputy directors of schools and kindergartens, educators and others. A conviction of a criminal court is a ground for dismissal. The reason for this is the significance of the job function of a pedagogical specialist, which includes certain responsibilities towards children and adolescents.
- 29 Specific grounds for dismissal are also provided for for individuals who hold academic posts (*академични длъжности*). Academic posts are specified in the Law on the Development of Academic Staff in the Republic of Bulgaria. They include assistant professors, chief assistant professors, associate professors and professors. They exist in schools of higher education and research organisations.

³¹ Art 326, para 2 LC.

³² Art 221 LC.

³³ Art 338 LC.

³⁴ Art 107v, para 2, item 4 LC.

³⁵ Art 330, para 1, item 10 LC; see Мръчков, *Коментар* (н 16) 1024–1025.

Among other grounds, such employment relationships can also be terminated on specific grounds, namely:

- (1) *Reaching the age of 65 (навършване на 65-годишна възраст)*.³⁶ This ground applies to those who hold associate professor or professor posts. The termination occurs on the day such employees reach the age of 65. Dismissals in such cases are with notice.
- (2) *Plagiarism (плагиатство)*.³⁷ Plagiarism involves using others' work or a significant part thereof as one's own to obtain a degree ('doctor' or 'doctor of science') or academic post.
- (3) Giving an opinion on an academic competition as a result of a criminal offence (*даване на заключение за заемане на научната длъжност въз основа на престъпление*).³⁸ The said opinions are given by members of academic juries on competitions and of academic councils when selecting individuals for academic posts. The ground for dismissal occurs on the day of enforcement of the conviction for the respective offence.
- (4) *Two consecutive negative attestations (две последователни отрицателни атестации)*.³⁹ An attestation is a comprehensive assessment of the academic staff's overall research, teaching and other activities. It is carried out every three years for assistant and chief assistant posts, and every five years for associate professors and professors. Two consecutive negative attestations are a testimony of the individual's lack of qualities or skills to adequately perform his or her duties.

C. Scope of Dismissal Protection

The rules on terminations of the employment relationship in Bulgaria, including dismissal protection, apply to the entire country. This follows from the provision of Article 1, para. 1 LC, which provides that the Labour Code applies to employment relationships between employees and employers, without exemption.

Bulgarian labour law applies equally to all employers.⁴⁰ This also applies to the rules on dismissal. No single category of employer is excluded from these rules. All rules on dismissal apply equally to small employers as well.⁴¹ There are no special purpose enterprises in Bulgaria that are excluded from the rules on dismissal.

Bulgarian labour law applies to all employees. There are no employees who are excluded from the rules on dismissal.⁴²

D. Possible Reasons for Dismissal

I. General Issues

In Bulgaria, unilateral terminations of the employment relationship by the employer (dismissals) are subject to the principle of the legality of the grounds for dismissal according to which the employer may terminate the relationship either with notice or

³⁶ Art 328, para 1, item 10 LC; see Средкова, *Трудово право* (n 16) 448–449; Мръчков, *Трудово право* (n 16) 632–633; Мръчков, *Коментар* (n 16) 998–999.

³⁷ Art 35, para 1, item 1 of the Law on the Development of Academic Staff in the Republic of Bulgaria.

³⁸ Art 35, para 1, item 2 of the Law on the Development of Academic Staff in the Republic of Bulgaria.

³⁹ Art 35, para 1, item 3 of the Law on the Development of Academic Staff in the Republic of Bulgaria.

⁴⁰ Art 1, para 1 LC.

⁴¹ Art 1, para 1 LC.

⁴² Art 1, para 1 LC.

without notice.⁴³ The employer does not have the right to terminate employment relationships beyond these grounds.

II. Basic Freedom of Termination

- 34 In Bulgarian labour law, the freedom of termination of the employment relationship is only established for terminations by mutual consent of the parties⁴⁴ and for terminations by the employee with notice,⁴⁵ as well as for terminations of the employment contract for additional work by each of the parties with notice.⁴⁶ In all other cases, terminations are only admissible on explicit and exhaustive grounds established by law.⁴⁷
- 35 The employer is only entitled to terminate (without motivation) the employment contract for two reasons:
- (1) Terminations of the employment contract by *mutual consent* (*взаимно съгласие*) of the parties.⁴⁸ This is possible in two situations:
 - *mutual consent*.⁴⁹ Both parties to an employment relationship may terminate the employment contract and the other party is free to accept it or not. As regards the employer, he/she is not required to justify his or her decision to terminate the employment relationship or to reject the employee's resignation. The binding force of the termination/resignation is seven days;
 - *mutual agreement with compensation by the employer* (*взаимно съгласие срещу обезщетение от работодателя*).⁵⁰ The specifics of this ground are limited to the following circumstances. An employer may propose the termination of the employment relationship. The reasons for this are irrelevant. The employee's consent to the termination of the legal relationship is conditional on payment of compensation by the employer. Its amount shall be determined by agreement between the parties but may not be less than four times the amount of the last gross remuneration earned. Payment of the agreed compensation must be made within one month of the termination of the legal employment relationship. If the compensation is not paid within that period, the law sets out a fiction of ceasing the existence of the grounds for termination of the legal relationship.
 - (2) Terminations of employment contracts for additional work and for traineeships.⁵¹
- 36 An *employment contract for additional work* may be concluded by the employee either with his or her employer under the main employment relationship⁵² or with

⁴³ On this principle in Bulgarian legislation, see in detail Л Радоилски, *Трудово право на Народна република България* (София, Наука и изкуство, 1957) 540–542; Средкова, *Трудово право* (n 16) 435–437; Мръчков, *Трудово право* (n 16) 610–611; Мръчков, *Коментар* (n 16) 975–976.

⁴⁴ Arts 325, para 1, item 1 and 331 LC.

⁴⁵ Art 326 LC.

⁴⁶ Art 334 LC.

⁴⁷ Art 325, para 1, items 2–12 and Arts 327–330 LC.

⁴⁸ Arts 325, para 1, item 1 and 331 LC.

⁴⁹ Art 325, para 1, item 1 LC; see Радоилски (n 43) 545–546; В Мръчков, *Прекратяване на трудовия договор по взаимно съгласие на страните* (1966) 6 *Правна мисъл*, 27–42; Средкова, *Трудово право* (n 16) 578–580; Мръчков, *Коментар* (n 16), 941–944; А Василев, *Трудово право* (Бургас, Бургаски свободен университет (1997) 477–478; Средкова, *Трудово право* (n 16) 414–415.

⁵⁰ Art 331 LC; see Цв Пенчева, *Прекратяване на трудовия договор по инициатива на работодателя срещу уговорено обезщетение (чл. 331 КТ)* (2001) 3 *Съвременно право*, 103–110; Средкова, *Трудово право* (n 16) 315; Мръчков, *Трудово право* (n 16) 580–582; Мръчков, *Коментар* (n 16) 1025–1031.

⁵¹ Art 334 LC; see Мръчков, *Коментар* (n 16) 1048–1050.

⁵² Art 110 LC.

another employer⁵³ for work beyond the working hours established in the main employment relationship. This contract may be terminated by either party with a 15-day notice period without the need for justification.

An employment contract for traineeships (*трудоов договор за стажуване*) may be concluded with a person up to the age of 29, who has completed higher or secondary education, but has no periods of employment and no professional experience in the acquired expertise.⁵⁴ This contract may also be terminated by either party with a 15-day notice without the need for justification. 37

III. Restrictions

In Bulgarian law, any terminations of the employment relationship are considered lawful unless they are challenged in accordance with the procedure laid down in the law.⁵⁵ The law does not provide for automatic unlawfulness of dismissals. The court can only declare a dismissal unlawful without considering the substance of the case in one situation. It is explicitly provided for in Article 344, paragraph 2 LC – in cases in which the dismissal requires the prior consent of the labour inspectorate or of a trade union and such consent has not been requested or has not been granted prior to the dismissal, the court shall revoke the employer's order of dismissal as unlawful on these grounds only, without examining the labour dispute on merits. 38

IV. Reasons for Dismissal

1. Capacity-related Reasons

As already mentioned above, Bulgarian legislation explicitly and comprehensively establishes grounds for dismissal, including those relating to the employee's ability to perform his or her work under the employment relationship. These grounds can be divided into two categories. 39

One category is grounds for dismissal with notice. This group includes: 40

- (1) Lack of necessary education or professional qualifications for the work to be performed (*Липса на необходимото образование или професионална квалификация за изпълнение на възложената работа*).⁵⁶ This lack is considered a formal one. It does not matter whether the employee actually performs his or her work effectively. The lack of qualification must have arisen after the employment relationship was concluded (for example, secondary education sufficed up to a certain point, but the job description subsequently changed and a higher level of education is required). If the employee did not have the necessary education or professional qualifications at the time the employment relationship was concluded, this legal basis for the employment relationship to arise would be void.⁵⁷ The changed requirements may be envisaged in a statutory act or in the job description adopted after the establishment of the employ-

⁵³ Art 112 LC.

⁵⁴ Arts 233a-233c LC; see Мръчков, *Трудово право* (n 16) 252–256; Мръчков, *Коментар* (n 16) 800–807.

⁵⁵ Art 344 LC.

⁵⁶ Art 328, para 1, item 6 LC; see Василев (n 49) 497; Средкова, *Трудово право* (n 16) 449–450; Мръчков, *Трудово право* (n 16) 627–628; Мръчков, *Коментар* (n 16) 991–994.

⁵⁷ Art 74, para 1 LC.

ment relationship.⁵⁸ The grounds for dismissal under Article 328, paragraph 1, item 6 LC may be expressed in two forms:⁵⁹

- *lack of education*. This is the type and level of education required for the post (for example, secondary vocational education in television equipment, higher medical education, etc.);
- *lack of professional qualifications*. In addition to education, professional qualifications can also be determined by other requirements (for example, not just a doctor, but an ophthalmologist). Lack of education, however, always means lack of professional qualification, though the opposite is not always true.

Case law consistently accepts that the employer's dismissal order must explicitly state the reason for dismissal – lack of education, professional qualifications or both.⁶⁰

- (2) Changing the requirements for the post, which the employee does not meet (*Промяна на изискванията за заемане на длъжността, ако работникът или служителят не отговаря на тях*).⁶¹ The elements of this ground for dismissal are:
- *a subsequent change in the requirements of the post*. These are requirements other than education and professional qualifications (for example, work experience, computer literacy, etc.). They are established in a statutory act or in a job description and may be completely revised or upgraded. This modification occurs after the employment relationship has been concluded and the reasons for this are irrelevant. The changes must be relevant to the post and must be objectively necessary;⁶²
 - *non-compliance of the employee with the changed requirements*. If the employee meets the requirements, there are no grounds for terminating the employment relationship.
- (3) *Performance of the employment contract is objectively impossible (Обективна невъзможност за изпълнение на трудовия договор)*.⁶³ The work referred to in this ground for dismissal is the job function for which the employment relationship was created. The employee must perform his or her work in accordance with Article 124 LC.

If the employee cannot perform his or her work, the fulfilment of the obligations under the employment relationship is affected. The reasons for why the employee cannot perform his or her work are irrelevant. What matters is the lack of the possibility to be objective, ie to not depend on the will of the parties to the employment relationship. This is the case, for example, when an employee has been denied the right to access classified information. This objective absence of possibility occurs after the employment relationship has been established.

- 41 Another group of grounds for dismissal related to the employee's ability to perform his or her work under the employment contract are grounds for dismissal without notice. In such cases, the employer has a public obligation to dismiss the employee. Such grounds are:
- (1) Disqualification of the employee from practicing a particular profession (*Лишаване на работника или служителя от правото да упражнява определена професия*).⁶⁴ Disqualification from practicing a particular profession is a sanction which may be

⁵⁸ Ruling No 201–1998-III c.d., SC.

⁵⁹ Ruling No 591–2005-III c.d., SCC.

⁶⁰ Rulings No 79–1998-III c.d., SC, No 1353–1999-III c.d., No 13–2000-III c.d., SCC.

⁶¹ Art 328, para 1, item 11 LC; see Василев (n 49) 500–501; Средкова, *Трудово право* (n 16) 450; Мръчков, *Трудово право* (n 16) 621–622; Мръчков, *Коментар* (n 16), 1002–1003.

⁶² Ruling No 712–1995-III c.d., SC.

⁶³ Art 328, para 1, item 12 LC; see Василев (n 49) 501–502; Средкова, *Трудово право* (n 16) 450–451; Мръчков, *Трудово право* (n 16) 634–635; Мръчков, *Коментар* (n 16) 1003–1004.

⁶⁴ Art 330, para 2, item 1, part 1 LC; see Василев (n 49) 504–505; Средкова, *Трудово право* (n 16) 457; Мръчков, *Трудово право* (n 16) 646.