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Legal Framework Regulating Termination of Employment Relationship and Its Challenges in the Republic of Latvia

Summary of the Doctoral Thesis for obtaining
the scientific degree “Doctor of Science (*PhD*)”

Sector Group – Social Sciences

Sector – Law

Sub-Sector – Civil Rights

Rīga, 2024



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Abbreviations Used in the Thesis

APL	Administrative Procedure Law
SC	Supreme Court of the Republic of Latvia
CPL	Civil Procedure Law
CL	Civil Law
LPL	Labour Protection Law
LSP	Labour and safety protection
LL	Labour Law
ECHR	European Court of Human Rights
EU	European Union
Estonia	Republic of Estonia
CA	Collective Agreement
FTUCL	Free Trade Union Confederation of Latvia
ECL	Employers' Confederation of Latvia
Lithuania	Republic of Lithuania
Cabinet Regulation No. 394	Cabinet Regulation No. 394 of 2 June 2008
Cabinet Regulation No. 558	Cabinet Regulation No. 558 of 4 September 2018
Organisational documents	Documents within the scope of Cabinet Regulation No 558
Constitution	Constitution of the Republic of Latvia (<i>Satversme</i>)
ILO	International Labour Organisation
Finland	Republic of Finland
SLI	State Labour Inspectorate

Introduction

Every aspect of social and economic life involves employment. Clear regulation of the employment relationship is an essential element of national legal policy. The choice of a correct and effective legal framework model largely determines a country's economic growth and investment climate, as well as the well-being of society. Labour law is an important guarantor of the human rights referred to in Articles 106–109 of the Constitution. It operates within the framework of civil law relations and comprises a common system of labour law functions, including a social function. Since the aim of any normative act regulating civil law relations is to ensure stable legal relationship by excluding conflicts between the parties of a contract or, in the event of a disagreement, by applying the relevant legal provisions to eliminate such discrepancies,¹ the legal framework regulating termination of the employment relationship contained in the LL and the problems of its practical application are not only a matter of private law but also a factor affecting public law, including social law. At the same time, it should be noted that labour law is also a sub-sector of the field of legal science.²

Labour is the purposeful activity of human beings to create the material and immaterial goods and services necessary to meet the needs of society. Labour is one of the factors of production, it is the useful result of human activity and enables people to earn their living. Depending on the complexity of the work and the knowledge and skills required to perform it, a distinction is made between: highly skilled labour, skilled labour and unskilled labour.³ It should be borne in

¹ Jonikāns, V. 2020. *Darba likums ar komentāriem*. Rīga: Latvijas Brīvo arodbiedrību savienība, 14.

² Cabinet Regulation No. 595. 27.09.2022. *Regulations on Latvian Science Industry Groups, Science Sectors and Sub-Sectors*. Latvijas Vēstnesis. 29.09.2022, 189.

³ Mihailovs, I. J., Girgensone, B. 2016. *Terminu skaidrojošā vārdnīca ģimenes un bērnu tiesībās*. Rīga: Drukātava, 90.

mind that labour law today is evolving as a result of societal processes. Globalisation, changes in socio-legal values and technological developments have introduced new trends in the evaluation and regulation of labour law.⁴ It has moved beyond the classical civil law framework, becoming not only an absolute value, but also an important part of the economic life of society, as well as a precondition for the future development of the state and society, and an inclusive environment. The transformation also affects the regulation of the termination of employment and its social aspects.

In describing the social function of labour law, a reference should be made to the Report of the International Labour Organisation (ILO) Conference held in June 2023, which pointed out that individuals today face a variety of crisis situations. These crises present challenges of various kinds, such as economic challenges resulting in unequal treatment of individuals, i.e. legal persons are unable to make the necessary investments, pay employees their salaries, thus creating a situation where an employee is dismissed from their job and is unable to provide a minimum subsistence for themselves and their family.⁵ At the same time, the social function of labour law can be correlated with social justice. The ILO Conference Report states that social justice implies that all people, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development, provided that individuals are preserved in freedom, dignity, economic security and equality of opportunity.⁶ Adequate access to labour is fundamental to the promotion of social justice. As income from work is the main source of income for most people, full and freely

⁴ European Commission. 01.03.2023. *Digitalisation in social security coordination (ESSPASS) and 'Labour Cards'*. Available: <https://ec.europa.eu/social/main.jsp?langId=en&catId=88&eventsId=2065&furtherEvents=yes> [viewed 29.06.2023].

⁵ International Labour Organization. 2023. *Advancing social justice*. Available: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_882219.pdf [viewed 29.06.2023].

⁶ *Ibid.*, 7.

chosen employment and social protection would ensure an improvement in the standard of living of individuals and enable workers to develop to their full potential. It should also be noted that an increase in labour income would reduce inequalities among workers and ensure an increase in personal well-being and social integrity.⁷

In order to eliminate misapplication and misinterpretation of Articles 100 and 101(I)(1)–(5) of the LL by an employer and an employee, it is necessary to first regulate the establishment of an employment relationship. In the case of the termination of the employment relationship, the social function may be characterised by the need for an employer, upon termination of an employment relationship with the employee, to provide the legal benefits that an employee would have received during the employment relationship at the relevant workplace (e.g. collective agreement, refresher training). This means that the employer would have to provide the employee with all social guarantees (not only the salary) even in the event of termination. Otherwise, if these social guarantees are not provided, disputes may arise between the parties involved – the employee and the employer. These disputes should be settled before a court of general jurisdiction, which is most likely to decide to provide the employee with the social guarantees that have not been provided and to reinstate the employee by a court order. In the context of termination of employment relationship, it is necessary to highlight a problem that involves legal assumptions which, while traditionally rooting the termination of employment relationship in the individual rights of the legal subject (both employer and employee), ignore the social aspects of the issue, which affect a much wider

⁷ International Labour Organization. 2023. *Advancing social justice*. Available: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_882219.pdf [viewed 29.06.2023].

range of legal subjects, i.e. legal assumptions do not focus on the social function of labour law.

It is precisely the social function of labour law that makes it possible to identify the fact that labour law affects not only employment relationship, but also, to a large extent, those social relations that are linked to macroeconomic processes and are constantly expanding. It is therefore necessary to study labour law and, in particular, the termination of employment relationship in the context of its social function potential. The social function potential of labour law comprises the means and possibilities, including the legal framework for the termination of employment relationship, which can be used to address socio-economic issues. In the existing labour legislation, without reducing the systemic nature of the legal framework of employment relationship and without adversely affecting the scope of rights and obligations of legal subjects, as well as without radically changing the foundations of the legal system, but by expressing the legal framework more clearly and unambiguously, making it more precise and specific, conflicting interpretations would be excluded, which in turn would promote the rule of law, create a more procedurally economic approach, thus saving both private and public resources.

At present, the underused potential of the social function of labour law leads to labour disputes, which generally hinder the stable socio-economic development of the country. In order to ensure that the social function of labour law is effectively implemented, it is necessary to define a vector for the impact of the legal framework of labour law, in particular the termination of employment relationship, on subjective rights and social rights expressing the interests of the State.

In their Doctoral Thesis, the Author is convinced of the need to implement a socially responsible policy with regard to the legal framework of the relationship between employees and employers. The sustainable development of

any country and society depends directly on the optimal and rational management of the resources at its disposal, ensuring a balance between making the most efficient use of resources and guaranteeing their sustainable existence and, therefore, their continued availability. Human resources, the workforce being no exception in this respect, the balancing of the economic interests of employers and the needs of employees is recognised as an important factor in ensuring the sustainability of society. This is also the conclusion of the National Development Plan of Latvia for 2021–2027 approved by the Parliament (*Saeima*) on 2 July 2020⁸, which emphasises the need to take measures to achieve a significant economic boom, including stimulating employment, developing people's competences and increasing competitiveness in the labour market. In a globalising society, it is necessary to have laws and regulations that can effectively balance the economic interests of employers in the context of continuously rising labour costs and the social needs of employees, taking into account in particular the principle of equality between the parties enshrined in the laws and regulations. A number of issues related to the termination of the employment relationship have arisen in society, which require immediate legal solutions that meet the needs of modern society. The challenges in the context of termination of employment relationship have emerged from the need to respond to the problems caused by the global pandemic of the Covid-19, which points to an underutilisation of the potential of the social function of labour law. Despite the fact that in 2021 and 2022 there were restrictions related to the Covid-19 infection, 105 appeals were received by the Panel of the Court of Civil Appeals in cases concerning labour disputes 90 of them were heard before the court. By contrast, in 2022, the Panel of the Court of Civil Appeals had a backlog of

⁸ Saeimas paziņojums: *Par Latvijas Nacionālo attīstības plānu 2021.–2027. gadam (NAP2027)*. 02.07.2020. Latvijas Vēstnesis. Available: <https://likumi.lv/ta/id/315879-par-latvijas-nacionalo-attistibas-planu-20212027-gadam-nap2027> [viewed 12.09.2023]

25 appeals at the beginning of 2022. Based on the current case-law and jurisprudence, it can be acknowledged that the influence of various subjective factors on the employer's decision-making, as well as the lack of objectivity in the adequate reasoning and justification of the termination, has become a significant problem in cases of termination of employment contracts, in particular where the employer's termination is related to the employee's conduct. It is therefore necessary to improve and streamline the process of implementing employer-employee notices, i.e. to address possible shortcomings in the legal framework, firstly to reduce the likelihood of disputes between the employee and the employer in cases of termination of the employment relationship and secondly to reduce the workload of the courts. The problem of the interpretation and practical application by employers of the provisions of the legislation, where an employer implements an incomplete, *facta concludentia* unlawful termination process, which most often results in the initiation of legal proceedings, is still an issue. It should be acknowledged that the case-law in labour disputes is not uniform and that there is a diversity of interpretation of the legal provisions and a lack of up-to-date scholarly research in the field of national labour law. The dynamics of economic, legal and social development point to the need for complex and sequential reforms of labour law, in particular of the legal framework for the termination of employment relationship, improving the social potential of labour law. In the light of her practical experience, the Author observes that problematic situations exist in the field of labour law, in particular in relation to the termination of the employment relationship. The main cause of these problematic situations is the contradictory, incomplete, difficult to interpret and apply legal framework, which results in the misunderstanding of the teleology of the legislator and the failure to achieve the social purpose of legal norms. In view of the above, a high-quality and innovative study is needed,

proposing constructive solutions for modernising and improving the efficiency of the labour law system in Latvia.

Aim of the Thesis

Analyse termination issues in employment relationships, encompassing the domain of the social functions of labour law. Identify problematic areas and propose both theoretical and practical recommendations for their resolution.

Objectives of the Thesis

To achieve the Aim of the Doctoral Thesis the following objectives have been set:

- 1 to describe and analyse the role of the principles and social function of labour law in employment relationship;
- 2 to study and analyse the reasons for the termination of employment relationship when deciding on the termination of employment relationship;
- 3 to study and analyse the types of termination of employment relationship within the scope of the social function of labour law;
- 4 to study and analyse the influence of the subjective intent of individuals in the termination of the employment relationship;
- 5 to study and analyse the impact of the legal framework of the procedure for termination of the employment relationship in guaranteeing the social security of individuals;
- 6 to propose innovative solutions for the development of legislation regulating the termination of the employment relationship and for the modernisation of the legal system in Latvia.

Research Questions

- 1 What is the current state of the existing regulatory framework in the Republic of Latvia in the area of termination of employment relationship, its interpretation and application practice with regard to ensuring an effective balancing of the opposing interests of an employee and an employer?
- 2 How is the practical implementation of the termination of employment relationship and the definition of the relevant legal boundaries understood in the Latvian and other legal systems?
- 3 How should the existing regulatory framework in the Republic of Latvia in the area of termination of employment relationship be updated?
- 4 How does the job description, as a mandatory annex to the employment contract, affect the resolution of the challenges of termination of the employment relationship?
- 5 What is the impact of legally correct or incorrect establishment of the employment relationship on the optimality of subsequent termination?

The Object of the Doctoral Thesis is the employment relationship between an employer and an employee.

The Subject of the Doctoral Thesis is the legal framework of the employment relationship between employer and employee, its interpretation and application.

Novelty of the Thesis

The scientific novelty of the research is the complex study of the problems of termination of employment relationship in the context of the social function. Social function, as a concept, is important nowadays, because only full provision

of social function fulfils the main interests of mankind in generating income for the population. This, in turn, serves to prevent social injustice, by ensuring that every person has social security for the maintenance and free development of his or her self-esteem and the right to work with “just and sufficient remuneration”.

This helps to avoid experiences such as unemployment, vulnerability, the right to a standard of living necessary to maintain one's health and well-being, including food, clothing, housing, medical services and the necessary social services. The study addresses issues not previously described in the scientific literature, such as the potential of the social function of labour law, the impact of the working environment on the termination of employment relationship, the characterisation of the employer-employee relationship in the context of the sociology of law, the axiological assessment of the termination of employment relationship as part of the labour law system, the proposal of new means of legal protection and dispute resolution.

The Doctoral Thesis is a complete scientific study. In the course of her research, the Author examines successively the types of termination of the employment relationship and their social aspects. The Author's practical experience of ten years as a labour law specialist in a trade union, drafting employment relationship documents and advising employees and employers, adds value to the study. This enables the author to conduct analysis of the legal requirements not only from a theoretical point of view, but also facilitates the identification of challenges in the application of the legal provisions.

The approach chosen allows the identification of the preconditions necessary for the unification and modernisation of the environment in which the employment relationship is terminated in the context of social aspects. The conclusions and proposals made in the Doctoral Thesis can be used in the development of legal policy concepts in the field of labour law. The research is important for the development of legal science. An innovative solution is offered

to certain problems. Moreover, it is one of the most recent studies in the field, and therefore its findings can serve both as a basis for further research on labour law issues and as a source of new knowledge. In addition, it should be noted that there is a need for a united approach to the understanding and interpretation of the legal provisions governing the termination of the employment relationship. There is also a distinct lack of academic literature on national labour law. Thus, there is a need for a high-quality and innovative study, offering constructive and comprehensive solutions for modernising and improving the efficiency of the legal system in Latvia.

The novelty of the Author's study is also justified by several circumstances:

- 1 The importance of labour law (including the legal framework of the termination of employment relationship) in the life of an employer, employee and society, taking into account the social function of labour law.
- 2 The objectives, tasks, role and functions of labour law are closely interrelated and reflect the interests of society, employers and employees. Depending on the actual conditions, employment ensures the creation of the material resources necessary for life, which is the basis for the sustainable development of society. At the same time, it is also a resource that shapes the environment and the expression of a fundamental right – the right to employment. Employment is an integral part of social life, a mirror of socio-legal and economic processes, ensuring the individual's right to economic and legal self-determination.
- 3 Transforming perceptions of termination of employment relationship.

- 4 In today's world, termination of employment relationship is no longer seen as an absolute freedom for individuals. The society and the State want terminations to respect social and legal norms, taking into account the legitimate economic and social interests of individuals as far as possible.
- 5 This is a form of democracy which ensures social balance. At the same time, it should be stressed that for social balance to be effective, it is equally important for the regulatory framework to identify and legally enshrine the limits of proportionality and control mechanisms.
- 6 The demands of the modern world on the legal framework for the termination of the employment relationship. Globalisation, freedom of movement, technological solutions (electronic documents, e-signatures, the Internet) require legal entities to ensure that the existence and termination of employment relationship is efficient, that time and financial resources are minimised, while maintaining a high level of legal security and the general legal order of the working environment.

Several research methods were used to develop a qualitative study.

General Scientific Research Methods

Abstraction was used to isolate the most significant legal factors affecting the termination of employment relationship, exploring their impact on the termination of the employment relationship as a complex of legal constructs. The **analytical research method** was used to study the rights, obligations and their interaction with each other under the laws and regulations governing the termination of employment relationship. Among others, by analysing the issues arising from the interpretation and practical application of the relevant legal

norms, by conducting an appropriate study of the case-law of the courts of general jurisdiction and the Constitutional Court, as well as by studying the findings of national, EU and foreign legal doctrine on the termination of employment relationship. The **descriptive research method** was used to study in detail the legal framework regulating the termination of employment relationship, gathering information and providing explanations based on the research, as well as identifying issues. It was used to outline the nature and the challenges of the institution of termination of employment relationship, analyse case law and jurisprudence, and suggest solutions to the detected challenges. The **deductive research method** was used mainly to determine conclusions on the conceptual impact of national, EU and foreign legal doctrines on certain elements of the norms regulating the termination of employment relationship. At the same time, the method was used to draw conclusions on the doctrinal findings and opinions of various authors on the issues of termination of employment relationship. The **inductive research method** was used to draw conclusions in relation to common trends in national, EU and foreign legal doctrines on termination of employment relationship; common trends in the interpretation and practical application of legal norms; common trends in the practice of courts of general jurisdiction and the Constitutional Court; common trends in the legal conduct of employers and employees, as well as in the analysis of the results of employee and employer surveys, arising from the individual elements. The **logical-constructive research method** was used to draw conclusions and make proposals and formulate concrete proposals by the Author. The **dogmatic research method** helped to understand the labour law norms correctly. The dogmatic method will be applied in order to obtain a correct understanding of the legal content of the legal norms and to get to know the essence. This method contributed to the achievement of the Aim of the Thesis, namely, to draw scientifically valid conclusions on the basis of the analysis of existing norms,

which could be used in the process of improving labour law norms, either by revising existing norms or by developing new ones. The **comparative law method** was applied by examining the common and different features of the legal norms regulating the termination of employment relationship in different jurisdictions (national/foreign - Republic of Lithuania, Republic of Estonia, Republic of Finland, etc.), in different periods of historical development (Ancient Rome, etc.), as well as by examining the common and different features in relation to the various grounds for termination of employment relationship provided for in the national labour law framework. The **historical research method** will be used to study the origin and development of the legal norms regulating the termination of employment relationship – the normative framework in Ancient Rome (morals), the modern labour law norms of the Republic of Latvia and the EU norms. Emphasis will be placed on the transformation of law in the context of EU directives and UN conventions. The **legal modelling method** was used to assign the possible impact of the Author's proposed amendments on the normative acts and uniform interpretation of legal norms on the regulation of employment relationship in Latvia in the field of notice of termination of employment contract.

Methods of Interpretation of Legal Norms

The **grammatical or philological interpretation method** was applied for the study of the linguistic essence and conceptual meaning of the normative acts regulating the termination of employment relationship, clarifying the meaning of the legal norms from the linguistic point of view. The **historical interpretation method** was applied to explore the meaning and essence of the normative acts regulating the termination of employment relationship, taking into account the social, economic, legal, etc. situation at the time of the creation of the normative acts, assessing the legal needs of different groups of society at

that time, the motivation of the creator of the norm and other historical circumstances during the creation and application of the normative acts. This is an important method for understanding the current range of societal needs for a common interpretation and modernisation of the norms governing the termination of the employment relationship. The **systematic interpretation method** will be used to explore the meaning and substance of the laws and regulations governing the termination of employment relationship in relation to their specific role and place within a unified legal system, in interplay with other elements of the legal system. The **teleological (meaning and purpose) interpretation method** will be applied for the purpose of understanding the meaning and the essence of the normative acts regulating the termination of employment relationship from the point of view of the intention and motivation of the creator of legal norms for the purpose of achieving a useful and fair objective by means of the relevant normative act – effective balancing of opposing legal and economic interests of the employee and the employer, etc.

The thesis analysed the conclusion of the employment relationship and the social function of labour law. The principle of objectivity and systematicity were also applied, with the above methods being used in a sustained, systematic and varied manner, thus ensuring that the findings on the legal framework of the termination of employment relationship and its problematics are not episodic and subjective in nature, and that objective regularities are not ignored.

The study analysed the existence of the legal framework for the termination of employment relationship and the experience of its application in several foreign countries: Lithuania, Estonia and Finland. Lithuania and Estonia were chosen on the basis of the fact that they have an analogous historical experience and level of economic development as the Republic of Latvia, in such a way that it would allow to analyse the termination of the employment relationship in countries with analogous historical experience and economic

development. The legal framework and practical experience of Finland, as a classic example of a socially responsible country, in the event of termination of employment relationship would allow an assessment of whether the Finnish practice could be applied in the Republic of Latvia in the future.

1 The Role of the Principles and Social Function of Labour Law in Employment Relationship

The chapter explains the framework of the legal relationship between the employee and the employer as a single system, highlighting the importance of the system's core principles and social function. Legal norms regulating the employment relationship constitute national labour law, EU and international labour law as a whole, creating abstract and binding rules of conduct within a common system.

Civil law is characterised by a number of principles that express the nature of civil law and relate to its method of regulation.⁹ These principles are relevant both to the application of the civil law framework and to the distinction between civil law and public law. The author considers that the consistent observance of both civil law principles and labour law, as special principles of law, in the establishment, amendment and termination of the employment relationship plays an important social security role in society as a whole. At the same time, the author will provide in this chapter an overview of the key principles of civil law that are related to labour law.

The **principle of freedom of contract** underpins the equality of the subjects of civil law and provides that the parties to a contract, who are at the same time the subjects of civil law, are free to choose whether or not to enter into the contract, how and in what form to express their intention to enter into the contract, the content of the contract and the circumstances in which the contract may be cancelled or unilaterally repudiated. This also applies to the contract of

⁹ Danylova, M. V. et al. 2022. *International Principles and Standards of Labor Law as a Basis for Improving Labor Legislation of Ukraine*. Available: https://ideas.repec.org/a/spr/ijlaec/v65y2022i4d10.1007_s41027-022-00409-2.html [viewed 20.04.2023]; Golovina, S. Yu., et al. 2022. *Social Justice and Humanism as Axiological Principles of Labor Law and the Concept of the Quality of Working Life*. Available: <https://kulawr.msal.ru/jour/article/view/183> [viewed 20.04.2023].

employment and the termination of the employment relationship. The principle of freedom of contract is limited in the cases provided for by law. As noted by Sinaiskis: “It follows from the elements of the employment contract in its true sense that the legal nature of this employment contract is subordination of the employee.”¹⁰ **The principle of good faith** – Article 1 of the CL establishes good faith as a general obligation for all participants in private law transactions. Good faith is interpreted in doctrine as the duty to respect and observe the legitimate interests of others.¹¹ In an action for termination of employment relationship, the court uses the principle laid down in Article 1 of the CL as a yardstick for examining whether the claimant's conduct, in particular in the light of the evidence adduced in the case, is proportionate to the interests of the other party and whether it enjoys legal protection.¹² **The principle of equality** provides that legal equality is one of the most basic of fundamental rights, deriving directly from the general principle of justice, which is the main source of the idea of law in the Western civilisation. The prohibition of differential treatment referred to in Article 29(1) and (9) of the LL falls within the scope of the principle of equality.¹³ Latvian legal doctrine on Article 91 of the Constitution explains that the first sentence of this Article states that all people in Latvia are equal before the law and the courts, while the second sentence states that human rights are exercised without discrimination of any kind. According to Egils Levits, Honorary Doctor of the Latvian Academy of Sciences, the first sentence is the

¹⁰ Sinaiskis, V. 1939. *Darba līgums īstā un plašā nozīmē*. Jurists. Nr. 7–8 (101/102), 147. Available: http://www.periodika.lv/periodika2-viewer/view/index-dev.html?lang=fr#panel:pplissue:/p_001_juri1939n07-08|article: DIVL32|issue Type:P [viewed 13.02.2023]

¹¹ Balodis, K. 03.12.2002. *Labas ticības princips mūsdienu Latvijas civiltiesībās*. Jurista vārds. Nr. 24.

¹² Judgement of the of the Supreme Court of the Republic of Latvia, Department of Civil Cases, of 23 September 2014 in Case No. SKC-2376/2014.

¹³ Judgement of the of the Supreme Court of the Republic of Latvia, Department of Civil Cases, of 20 August 2019 in Case No. C33586617, SKC-605/2019.

main element of the principle of equality, while the second sentence establishes an auxiliary element of the principle of equality – the prohibition of discrimination.¹⁴ The principle of equality means that under the same factual and legal circumstances treatment shall be the same, while under different circumstances, treatment shall be different.

Principles of Labour Law

In Latvian case-law, in the judgement of the SC in Case No. SKC-921/201175, referring to the judgement of the Court of Justice of the European Union of 25 November 2010 in Case C-429/09, the Court stated that “in legal relationship between an employer and an employee, the employee is the weaker or vulnerable party to the contract.”¹⁵ Thus, it can be concluded that the protection of the employee is a value on the one hand, while the stability of the employment contract is the principle value on the other. According to the LL, the principles of labour law are:¹⁶

1) **invalidity of regulations that erode the legal status of employees** – provisions of a CA, working procedure regulations, as well as the provisions of an employment contract and orders of an employer which, contrary to laws and regulations, erode the legal status of an employee shall not be valid; 2) **principle of equal rights** – everyone has an equal right to work, to fair, safe and healthy working conditions, as well as to fair remuneration irrespective of a person's race,

¹⁴ Autoru kolektīvs prof. R. Baloža zinātniskajā vadībā. 2011 *Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības*, 74. Available: http://home.lu.lv/~rbalodis/Publikacijas/Constitutional_Law/Satv_Kom_ievads_R.B_alodis.pdf [viewed: 13.02.2023].

¹⁵ Judgement of the Supreme Court of the Republic of Latvia, Department of Civil Cases, of 26 October 2011 in Case No. SKC-921/2011. Available: <http://at.gov.lv/downloadlawfile/3203> [viewed 13.02.2023].

¹⁶ Džugleja, T. 2011. *Tiesību pamati*. Available: http://www.rtpv.edu.lv/spaw/uploads/files/TIESIBU_PAMATI.pdf [viewed 13.02.2023].

skin colour, gender, age, disability, religious, political or other conviction, ethnic or social origin, property or marital status, sexual orientation or other circumstances; 3) **right to unite in organisations** – employees as well as employers have the right to unite in organisations and to join them freely in order to defend their social, economic and occupational rights and interests and use the benefits provided by such organisations; 4) **prohibition to cause adverse consequences** – sanctions may not be imposed on an employee or adverse consequences may not be otherwise caused for him or her due to the fact that the employee exercises his or her rights in a permissible manner (for example, by taking part in a strike in accordance with the law), as well as if he or she informs the competent authorities or officials of suspicions of the commission of a criminal offence or an administrative offence in the workplace. 5) **principle of reverse burden of proof**. The principle of the reverse burden of proof and its application is most relevant in disputes concerning the termination of an employment relationship when the dispute is before a court. Article 29(8) of the LL also applies by analogy to the question of compensation for non-pecuniary damage in the event of prejudice or discrimination by the employer without imposing on the employee the burden of proving the existence of non-pecuniary damage pursuant to Article 1635 of the CL. Moreover, Article 9(2) of the LL provides for the principle of the reverse burden of proof.

The SC has held that the employer must be able to prove that the treatment of the employee at the notice of termination of the employment contract is not related to the employer's unjustified, biased, discriminatory treatment of the employee in question.¹⁷ With the above quotation, the author emphasises that the principle of the reverse burden of proof, **as a specific principle of labour law**,

¹⁷ Judgement of the Supreme Court of the Republic of Latvia, Department of Civil Cases, of 8 May 2013 in Case No. SKC-1482/2013 (C30505209), Clauses 14.3 and 14.3.1.

reduces social tension, as it replaces the adversarial principle in labour disputes and justifies the court's position that “regardless of what the claimant states in the application in a labour dispute, how he formulates his claim, what legal provisions he alleges, the court must independently qualify the basis of the claim and choose the applicable legal provisions. This follows from the legal principle “*iura novit curia*”.¹⁸ Moreover, in line with the principle of effectiveness of EU law, which obliges Member States to ensure that any individual can effectively exercise the rights conferred by EU law,” labour law establishes a reverse burden of proof where the claimant (employee) has alleged facts or circumstances which might indicate that he or she has been adversely affected or allegedly discriminated against. In such a situation, the employer must be able to prove that the treatment of the employee at the notice of termination of the employment contract, imposition of disciplinary measures, or verbal reprimands, is not due to unjustified, biased or discriminatory treatment of the employee concerned by the employer.¹⁹

The EU develops and adopts legislation setting minimum requirements on: (1) working conditions and terms of employment contracts, (2) information and consultation of workers. EU Member States may, according to their economic possibilities, ensure a higher level of protection for workers, including by specifying the 3 groups of circumstances which the employer must prove exist and which are the only grounds for the employer to be entitled to terminate the contract of employment in writing, and which are: (1) circumstances relating to the conduct of the employee; (2) circumstances relating to the capabilities of the employee; (3) circumstances relating to the implementation of economic,

¹⁸ Judgement of the Supreme Court of the Republic of Latvia, Department of Civil Cases, of 8 May 2013 in Case No. SKC-1482/2013 (C30505209), Clauses 14.3 and 14.3.1.

¹⁹ *Ibid.*, Clauses 14.3 and 14.3.1.

organisational, technological or similar measures in the undertaking²⁰. With the above, the author draws attention to the importance of the social function of labour law in the EU and recognises that it is precisely the social aspect of the employment relationship that provides the basis for studying the issue of termination of employment and its national legal framework by applying the methods of the realist school of sociology of law.²¹

In the context of the termination of employment relationship, it is important to study the provisions on legal transactions contained in Chapter 1 of the Law of Obligations of the CL,²² which are fully applicable to the conclusion and termination of an employment contract without losing sight of the social aspect of the relationship.

National labour law is closely linked to a country's economic and political system, social security and well-being. The social aspect and social guarantees, among which the possibility of concluding a CA guaranteed by the LL, have a special place here. The purpose of a CA is to improve the legal situation of employees compared to what is laid down in the LL and the employment contract. A CA can be concluded at a company, sectoral, national or even international level (global agreements) and is characterised by the following features: (1) it is a contract; (2) it contains legal provisions and (3) the employer is not entitled to refuse to conclude an agreed collective agreement. The CA is

²⁰ General Conference of the International Labour Organisation. 1982. *Termination of Employment Convention*. Article 4. Available: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C158 [viewed 13.02.2023].

²¹ Meļķīsis, U. 2022. *Tiesību socioloģija, socioloģijā*. Nacionālā enciklopēdija. Available: <https://enciklopedija.lv/skirklis/1230-ties%C4%ABbu-sociolo%C4%A3ija,-sociolo%C4%A3ij%C4%81> [viewed 13.02.2023].

²² Law of the Republic of Latvia: *Civil Law*. 20.02.1937. Valdības Vēstnesis. Articles 1403, 1404, 41. Available: http://periodika.lv/periodika2-viewer/view/index-dev.html#panel:pp|issue:p_001_tmve1934n09-10|article:DIVL169|query:jaun%C4%81%20visp%C4%81r%C4%93jiem%20par%20par|issueType:P [viewed 13.02.2023].

a *sui generis* contract which resembles other private law contracts only in the law of obligations, so that the principle of *pacta sunt servanda* applies to this contract and to its conclusion.²³ Article 1589 of the CL²⁴ provides that unilateral withdrawal from a contract shall be permitted only when it is based on the nature of the contract, or when the law provides for it in certain circumstances, or when such right was expressly contracted for. In the case of a CA, unilateral withdrawal is permissible on the ground that such a right was expressly exercised. This is relevant to the question of termination of employment relationship since in such a case the CA may provide additional social guarantees with regard to the search for a new job, notice periods, severance pay, including the possibility for the employee to withdraw their notice. The author also points out that in the CA, the employer and the employee representatives may determine the criteria for the application of Article 101(1)–(5) of the LL – what constitutes a significant breach of the employment contract or of the established working arrangements in a particular sector.

It is not necessary to have a specific legal framework for each event in an employment relationship, given the very wide range of possible variations in the relationship, since the content of the employment relationship cannot be predicted before it is established. **However, when an employment relationship is established, amended or terminated, it is necessary to ascertain whether it complies with the established rules in order, inter alia, to ascertain which provision of the LL may or should be applied in the event of a dispute.**

²³ Law of the Republic of Latvia: *Civil Law*. 20.02.1937. Valdības Vēstnesis. Article 1587, 41. Available: http://periodika.lv/periodika2-viewer/view/index-dev.html#panel:pp|issue:p_001_tmve1934n09-10|article:DIVL169|query:jaun%C4%81%20visp%C4%81r%C4%93jiem%20par%20par|issueType:P [viewed 13.02.2023].

²⁴ *Ibid.* [viewed 13.02.2023].

In the context of the termination of an employment relationship, the social nature of that relationship, which is related to the well-being of both the individual and society, is highlighted. In this context, the wording of the LL framework on the termination of employment relationship is essential, so that their application promotes development and disciplines the parties involved, rather than creating misunderstandings that are to be resolved as labour disputes.

Individual disputes are the most frequent disputes that are settled by court proceedings, as disputes may arise from the conclusion, amendment, supplementation or termination of an employment contract or collective agreement, as well as from the interpretation of laws, regulations, collective agreements and rules of procedure.

The court is an institution that is currently failing to implement one of the key principles generally followed in the resolution of labour disputes abroad, namely a speedy resolution.²⁵ Labour disputes belong to the special categories of cases in which the substantive rules provide for an exception to the burden of proof, i.e. a shift of the burden of proof to the other party (the employer) where the action is brought before the court by the employee because one of the parties to the dispute is considered to be a special subject for whom it is difficult to obtain evidence because of his condition or, on the contrary, all the evidence is predominantly available to one of the parties to the dispute.

Despite the adversarial principle in civil proceedings, Article 125 of the LL provides for an exception to it, namely the employer's burden of proof in labour disputes. This follows from the principle that in legal relations between

²⁵ Baltic Institute of Social Science. 2018. *Darba strīdu efektīvākas risināšanas iespējas Latvijā*. Available: https://www.vdi.gov.lv/sites/vdi/files/dati/petijums_darba_stridu_efektivakas_risinasanas_iespejas_latvija_028611.pdf [viewed 01.03.2023].

an employer and an employee, the employee is the weaker or more vulnerable party to the contract, which also applies to court proceedings.²⁶

The author has followed the implementation and the results of the study “*Darba strīdu efektīvākas risināšanas iespējas Latvijā*” (Eng – Possibilities of More Effective Settlement of Labour Disputes in Latvia)²⁷ and supports the view that the most important instrument that could bring about a significant change in the implementation of the labour dispute settlement policy is the establishment of a labour dispute commission at the SLI. In the author's view, it is important that, together with the establishment of a labour dispute commission, a number of measures are implemented to ensure the development of an appropriate legal framework, the provision of material and technical support, and the involvement of competent specialists and social partners.

The author concludes that the basic principles of labour law contained in the LL are essential for the implementation of the social function of an employment relationship. One of the tasks of the social function of an employment relationship is to take care of human capital.

For employers, investment in human capital includes obligations such as employee training, apprenticeship programmes, education allowances and benefits, family assistance and the financing of college scholarships. Neither employers nor employees have a guarantee that their investment in human capital will pay off. However, the level of investment in human capital is directly linked to both economic and social well-being. It follows from the above that in an employment relationship both parties – the employer and the employee – have

²⁶ Judgement of the Supreme Court of the Republic of Latvia, Department of Civil Cases, of 26 October 2011 in Case No. SKC-921/2011.

²⁷ Baltic Institute of Social Science. 2018. *Darba strīdu efektīvākas risināšanas iespējas Latvijā*. Available: https://www.vdi.gov.lv/sites/vdi/files/dati/petijums_darba_stridu_efektivakas_risinasanas_iespejas_latvija_028611.pdf [viewed 01.03.2023].

an interest in enhancing the professional capabilities of the employee and in developing specific skills. The LL contains a legal provision stipulating that the employer shall provide training and further qualification of an employee if it is necessary for the performance of his direct professional duties. However, problems arise in practice as the employer is not always sure that the employee will continue the employment relationship after the training and further development activities, as the LL did not provide for such an obligation until 1 January 2015. However, the 2014 amendments to the LL²⁸ provide that an agreement between the employer and the employee on payment for training may be concluded in cases where the training is necessary for the performance of professional duties but is not decisive for the performance of the contracted work. The amendments to the LL give the employer a guarantee that the employee will continue to work or will reimburse part of the training expenses. However, these amendments to the LL do not address the problem of compulsory paid educational activities. The employer still has too high a financial burden for the employee's professional training and too few rights to recover the expenses. The employee, on the other hand, retains the right to terminate the employment relationship. The author concludes that the amendments made to the LL in 2014 show that the legal provision contains all the principles of the training reimbursement clause, except that the employee would be obliged to reimburse the employer for training expenses if they terminate the employment relationship on their own initiative or are dismissed for unlawful conduct. As a result, in the author's view, it would be necessary to supplement the first paragraph of Article 96 of the LL.

²⁸ Law of the Republic of Latvia of 12 November 2014 “*Amendments to the Labour Law*”. Available: <https://likumi.lv/ta/id/270232-grozijumi-darba-likuma> [viewed 01.03.2023].

2 Determining the Reasons for the Termination of Employment Relationship when Deciding on the Termination of Employment Relationship

In the chapter, the author explains the impact on the legal framework of the reasons for the termination of the legal relationship between the employee and the employer, highlighting the subjective and objective aspects of these reasons.

2.1 Genesis of the Reasons for the Termination of Employment Relationship

Article 23 of the Universal Declaration of Human Rights stipulates that everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. Everyone, without any discrimination, has the right to equal pay for equal work. Everyone who works has the right to just and favourable remuneration, ensuring for himself and his family an existence worthy of human dignity. If necessary, it should be supplemented by other means of social protection. Everyone has the right to form and to join trade unions for the protection of his interests.²⁹ The aforementioned is also defined in the Constitution and has been implemented in the LL.

The author's study of the Constitution and international law reveals that the norms contained therein do not promise or guarantee well-being in the sense that a person who wants to work and receive a salary would like to interpret them. These norms contain wordings that do not allow a specific person to directly demand neither a free choice of employment, nor favourable conditions

²⁹ UN General Assembly. 10.12.1948. *Universal Declaration of Human Rights*. Available: <https://www.tiesibsargs.lv/lv/pages/tiesibu-akti/ano-dokumenti/ano-vispareja-cilvektiesibu-deklaracija> [viewed 10.02.2023].

of work, nor equal pay, nor an existence worthy of human dignity, because the standard of living cannot be “imposed by decrees”.³⁰

The well-being of people and society depends on the employment, professional development and growth of every able-bodied person, the economic development of the enterprise (workplace), the economic development of the country and socio-economic stability. The author agrees with the view that “many laws and regulations are designed to solve moral problems, while others serve to protect the interests of related parties”.³¹ It is therefore important to identify the reasons that make it necessary to terminate an employment relationship, bearing in mind that contractual obligations can be established, modified or terminated by mutual consent of the parties, which reflects the dynamics of the contractual relationship.

The employment contract is also governed by the provisions of the CL insofar as the LL and other laws and regulations governing an employment relationship do not provide otherwise..³² This means that the LL defines the employment contract and the content and form requirements thereof, and a person may decide to conclude, amend or terminate such a contract by expressing his will in accordance with the CL.³³ Professor Krasavcikovs, a legal scholar, has acknowledged that “when giving a legal assessment of a person's conduct, one should be guided not only by how this conduct manifests itself, but also by the relationship between the conduct and the process of intent, as a result

³⁰ Torgāns, K. 2001. *Dzīves kvalitāte, deklarācijās un tiesiskajā nodrošinājumā*. Latvijas Vēstnesis. Nr.26.

³¹ Autoru kolektīvs prof. K.Martinsones zinātniskajā vadībā. 2018. *Psihologu likuma komentāri. Psihologu profesionālā darbība Latvijā*. Rīga: Tiesu namu aģentūra, 99.

³² Law of the Republic of Latvia: *Labour Law*. 06.07.2001. Latvijas Vēstnesis. Article 28(2), 105 (2492); Ziņotājs. 09.08.2001, 15. Available: <http://likumi.lv/doc.php?id=26019> [viewed 29.02.2023].

³³ Law of the Republic of Latvia: *Civil Law*. 20.02.1937. *Valdības Vēstnesis*. Article 1511, 41. Available: <https://likumi.lv/ta/id/225418-civillikums> [viewed 01.03.2023].

of which a decision on a particular conduct was taken”.³⁴ In examining the question of the grounds for termination of employment relationship, it should first be noted that the only grounds on which an employer may terminate an employment contract in writing are circumstances relating to (1) the conduct of the employee; (2) the capabilities of the employee; (3) by carrying out economic, organisational, technological or similar measures in the undertaking.³⁵

Professor Rubene (the University of Latvia), an expert in educational sciences, has acknowledged that the factors that determine a person's actions in certain circumstances are also applicable to employment relationship, and that human actions in social space are determined by two parameters: “the amount of human resources”, i.e. the set of certain status, economic, political, cultural, etc. resources at a person's disposal, and “the structure of human resources”,³⁶ when the conduct, which is expressed in the drawing up and sequential observance of an employment contract of a certain content, is determined by these qualities of human resources. It can be assumed that these qualities are the basis for a person's decision to terminate an employment relationship, which is predominantly subjective, i.e. the reasons are related to the incompatibility of the employee's personal desires with the performance of the specific duties of the job in question. Thus, it can be concluded that the provisions regarding the need to terminate employment relationship contained in the LL is based on the objective and

³⁴ Ойгензихт, В. А. *Воля и волеизъявление (очерки теории, философии и психологии права)*. 1983. Душанбе, «Даниш», 44. Available: https://portalus.ru/modules/theoryoflaw/rus_readme.php?subaction=showfull&id=1647315612&archive=&start_from=&ucat=& [viewed 01.03.2023].

³⁵ General Conference of the International Labour Organisation. 1982. *Termination of Employment Convention*. Article 4. Available: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C158 [viewed 13.02.2023].

³⁶ Rubene, Z. 2008. *Kritiskā domāšana studiju procesā*. Rīga: LU akadēmiskais apgāds, 11. Available: http://www.ibook.lv/BD_kritiska-domasana-studiju-procesa-zanda-rubene.aspx?BID=1192a545-a61e-4dd5-a811-e738e1bebd52 [viewed 01.03.2023].

subjective reasons of the subjects – the employee and the employer – which determine the legitimacy of the relevant decision, as well as on the possibility of a compromise if a mutually beneficial agreement on the termination of employment relationship is reached. As regards the reasons for the employer's choice, the LL lays down specific requirements and procedures that guarantee the employee's right to be protected against unfair dismissal.

Firstly, the legislator specifies how employment relationship may be terminated: (1) by employee's notice; (2) by employer's notice, which must comply with the grounds and time limits laid down by law – procedures; (3) by reduction in the number of employees; (4) by collective redundancy; (5) by expiry of the employment contract; (6) by agreement between the employee and the employer; (7) by third party request, court decision or non-compliance of the employment contract with law; (8) by death of the employer. **Secondly**, the legislator provides for guarantees for employees and for the protection of employees in the event of termination of employment relationship. **Thirdly**, the legislator clarifies the issue of the transfer of an undertaking to a third party, which does not in itself entail the termination of employment relationship. **Fourthly**, the legislator sets out the employer's obligations when dismissing an employee.

The forms of termination of employment specified in the LL, with the exception of the employee's notice and the agreement between the employer and the employee, include the reason for the termination of employment relationship. This is very important and indicates that this list is optimal and cannot be subjectively extended, and that the principle that the employee is the weaker or the vulnerable party in the legal relationship between the employer and the employee is respected, as the employee does not have to provide reasons for their notice.

In the judgement of the Senate of the SC, Department of Civil Cases, of 11 May 2011 in Case No. SKC-291/2011³⁷, it was stated that the court, when applying Article 100(5) of the LL, did not indicate in the judgement the grounds on which it was guided in concluding that non-payment of wages should be assessed as an important reason based on considerations of morality and fairness. It is undeniable that non-payment of wages is an important reason for the notice of an employee, but in the context of the right to benefits, the important reason must be based on considerations of morality and fairness, i.e. considerations relating to ethical and moral norms (non-material values). The non-payment of wages prejudices the employee's pecuniary interests, and the law provides for a procedure whereby the employee may remedy such unlawful infringement of his rights by the employer. It is not always possible to attribute and link an employer's conduct to considerations of morality and fairness when it is judged to be unfair or unlawful.

In the judgement of the Senate of the SC, Department of Civil Cases, of 14 October 2009 in Case No. SKC-896/2009³⁸, it was stated that the right of the employee to revoke his notice, provided for in Article 103(3) of the LL, if not provided for in the collective agreement or employment contract, protects the employee against inconsistent and indefinite actions of the employer. The purpose of this provision is to create legal stability also in situations where an employment relationship is terminated following the employer's notice. The dismissed employee's action before the courts for the annulment of the notice of dismissal and reinstatement means the annulment of the notice of dismissal from the moment of its drawing up, which, without any further specific consent from the wrongfully dismissed employee, allows the employer to reinstate the

³⁷ Judgement of the Senate of the SC, Department of Civil Cases, of 11 May 2011 in Case No. SKC-291/2011.

³⁸ Judgement of the Supreme Court of the Republic of Latvia, Department of Civil Cases, of 14 October 2009 in Case No. SKC-921/2011.

employee on its own initiative, thereby, in essence, satisfying the employee's claim before the courts have ruled on it. With this thesis from the judgement, the author justifies the problem of employers' decision-making, which is inherently inconsistent because it is based on emotion rather than on a legal assessment.

On 27 February 2020, the Senate of the Supreme Court, Department of Civil Cases,³⁹ heard an action challenging both the legality of the employer's notice of termination and the validity of the claimant's notice of termination as an employee, which had the effects set out in Article 19 of the LL. There is, therefore, no reason to doubt that the action is brought on different grounds, each of which has its own cause of action and object of proof and different (depending on the legal constitution of the applicable legal provision) circumstances to be ascertained. This means that the action contains claims based on mutually exclusive grounds.

2.2 Mobbing and Bossing as a Reason for the Termination of Employment Relationship

Mobbing is a form of psychological or emotional violence within a company.⁴⁰ It can take the form of collective psychological bullying exercised by the company's employees towards one of their colleagues, subordinates or the company's manager in order to get the individual to leave the company.

The Riga City Court, in its judgement of 27 April 2023 in Civil Case No C68317122, in Clause 11.3(8), analysed the concepts of mobbing and bossing in case-law and various doctrinal sources. The Court concluded that the concepts

³⁹ Judgement of the Supreme Court of the Republic of Latvia, Department of Civil Cases, of 27 February 2020, Case No. C37069517, SKC-181/2020.

⁴⁰ Mickeviča, N. 2012. *Eiropas sociālā fonda projekts "Latvijas Brīvo arodbiedrību savienības administratīvās kapacitātes stiprināšana". Mobings darba vietā.* Available: https://arodbiedribas.lv/wpcontent/uploads/2019/11/mobings.darba_vieta_29.02.2012_1.pdf [viewed 01.03.2023].

of mobbing and bossing essentially refer to the same act: the use of psychological bullying against an employee in the workplace, making a theoretical distinction by recognising that psychological bullying by employees is called mobbing and psychological bullying by the employer's management is called bossing. Consequently, where the psychological bullying was perpetrated by management, it can be called both mobbing and bossing, and it is irrelevant to the resolution of the case which term the defendant uses to describe the employer's conduct against them, which they claim was psychological bullying.⁴¹

When assessing the individual facts of the alleged acts of emotional violence in isolation from each other, it is not possible to draw objective conclusions about the employer's alleged psychological pressure and the use of emotional violence against the person. The court's task in examining the arguments on emotional abuse is to focus on assessing the situation in a holistic manner.⁴² This serves as the basis for the author's assertion that systematic emotional abuse of an employee in the working environment constitutes a valid reason for the termination of an employment relationship within the meaning of Article 100(5) of the LL, as it clearly corresponds to the legislator's wording "on grounds of morality and fairness". The existing case-law is problematic, as pointed out in the judgement of the Supreme Court, Department of Civil Cases, of 28 April 2020 in Case No. SKC-276/2020.

The Department of Civil Cases of the SC, in its judgement of 8 April 2020 in Case No. SKC-276/2020⁴³, recognized that mobbing is psychological bullying, which includes a systematic, hostile and unethical attitude from one or

⁴¹ Judgement of the Riga City Court of 27 April 2023 in Case No. C68317122, Clause 11.3.

⁴² Judgement of the Senate of the Supreme Court of the Republic of Latvia, Department of Civil Cases, of 28 April 2020 in Case No. C30407917, SKC-276/2020.

⁴³ Judgement of the Senate of the Supreme Court of the Republic of Latvia, Department of Civil Cases, of 17 October 2017 in Case No. SKC-1267/2017.

more persons and is directed mainly against one individual, it manifests itself as: shouting, humiliating, belittling professional abilities or personal qualities, in the joint actions of one person or several persons, as well as other ways, which may not be illegal by their nature, but in their combination indicate the creation of adverse consequences for the employee. Conduct that takes the form of mobbing can be found to constitute a violation of the “equal right to work”, the right to “fair conditions of work”. Such a violation may also reach a level of prejudice that requires State intervention to restore a fair balance and may give rise to a right to compensation for non-pecuniary damage.⁴⁴

The author points out that the Court Information System search found 71 judgements for 2021, 28 judgements for 2022 and 10 judgements for 2023 (until May), including the keyword “mobbing”.⁴⁵ According to the author, it can be seen that case law is expanding as employees' awareness of the issue is also growing and employees are increasingly choosing to resolve conflicts in court. In the author's opinion, the judgement of the Senate of the Supreme Court, Department of Civil Cases, of 16 February 2023 in Case No. SKC-28/2023, where the Senate held that if a claimant alleges mobbing in the workplace without specifying the particular feature of the prohibition of discrimination, the court shall determine whether the employer's actions alleged by the claimant constitute a violation of the principle of equality, is noteworthy.⁴⁶

⁴⁴ Judgement of the Senate of the Supreme Court of the Republic of Latvia, Department of Civil Cases, of 20 August 2019 in Case No. C33586617, SKC-605/2019.

⁴⁵ Courts of Latvia. Latvian court portal service website. Available: <https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi> [viewed 28.04.2023].

⁴⁶ Judgement of the Senate of the Supreme Court of the Republic of Latvia, Department of Civil Cases, of 16 February 2023 in Case No. SKC-28/2023. Available: ECLI:LV:AT: 2023:0216.C30604219.15. S_[viewed 28.04.2023].

On 14 January 2020, the **Riga City Court of Latgale Suburb**⁴⁷ heard a case on the interpretation of mobbing in an employee's communication with the employer. In this case, the Court held that the claim for recognition of mobbing and recovery of moral damages for mobbing should be dismissed because: it was the employee's conduct that was unjustified, unethical and reprehensible, not the employer's; and the testimonies of witnesses proved that it was the employee who negatively affected the atmosphere in the work team and carried out psychological bullying. The court had no reason to doubt the evidence submitted by the employer, the employees' submissions, the conclusion of the evaluation committee, the veracity of the letter from the Health Inspectorate and the conclusion of the SLI. The Court qualified the employee not as a victim of mobbing, but as the mobber.⁴⁸

The author concludes that the present case demonstrates the complex nature of the termination of an employment relationship, which involves both the personal qualities of the parties involved and points to an objective legal obligation of the employer to prove the correctness of its conduct by applying the provisions of the LL and developing a strategy of conduct that is in line with the law, approved by the team and supported by evidence.

The essence of the judgement of Zemgale Regional Court of 15 June 2020 in Case No. 73499218⁴⁹ relates to the employee's whistleblowing on violations of laws and regulations discovered during the performance of their duties (collusion-cartel), which leads to backlash in the workplace – mobbing. The employer applied Article 101(1)(3) of the LL.

⁴⁷ Judgement of the Riga City Court of Latgale Suburb of 14 January 2020 in Case No. 29431218 (C-0412-20/5).

⁴⁸ Birkenfelde, S. 2020. *Lbas vēstis*. Nr.176. Available: https://arodbiedribas.lv/wp-content/uploads/2020/12/lbas_176.pdf [viewed 01.03.2023].

⁴⁹ Judgement of the Zemgale Regional Court, Panel of the Court of Civil Appeals, of 15 June 2020 in Case No. 73499218 (CA-0274-20/12).

In the judgement of Zemgale Regional Court of 15 June 2020 in Case No.73499218, the EU Court's finding that, in employment disputes, an employer should not base its proof solely on the testimony of its employees is noteworthy, as it should be emphasised that, given the position of the employee as the weaker party in the employment relationship, witness testimony as such cannot be considered an effective means of proof capable of ensuring that the rights in question are actually respected, since employees may be reluctant to testify against their employer for fear of measures that the latter may take and which may affect the employment relationship to their detriment.⁵⁰

In the author's view, in order to apply Article 101(1)(3) of the LL, the employer must also indicate the specific factual circumstances which correspond to and constitute the legal basis for the notice, including an objective assessment of the employee's conduct and the grounds for finding such conduct to be contrary to good morals, so that the court hearing the specific dispute has the opportunity to verify it.

Dr. iur. Janis Neimanis is convinced that psychological bullies can be dismissed from their jobs, because according to Article 28(2) of the LL, one of the employer's obligations, which it assumes by concluding an employment contract, is to ensure fair, safe and healthy working conditions for the employee. Psychological bullying in the workplace is a working condition harmful to health and safety. Psychological bullying of an employee is a violation of equal treatment of employees. Enabling mobbing is a breach of the employment contract which has legal and financial consequences for the employer. The LL

⁵⁰ Dupate, K. 2021. *Tiesu prakse darba tiesībās; Eiropas Savienības tiesību un tiesu prakses, kā arī starptautisko konvenciju ietekme darba tiesību vidē (tiesu prakse, normatīvā regulējuma salīdzinājums. 2015.-2020.gads)*. Available: https://www.ta.gov.lv/lv/tiesu-prakses-apkopojumi-0?utm_source=https%3A%2F%2Fwww.google.com%2F [viewed 01.03.2023].

gives the employer the right to terminate the employment of an employee who commits psychological bullying.⁵¹

2.3 Working Environment as a Reason for the Termination of Employment Relationship

The working environment is not only important for the health and safety of the employee but also for the success and future of the company. The working conditions provided to employees have an impact on the overall performance of the company.

Occupational health and safety provides the legal basis for the implementation of social, economic, technical, medical, preventive and organisational measures and ensures the implementation of requirements defined in regulatory documents.⁵² It ensures the recovery of the working environment, occupational safety, the reduction of accidents at work and occupational diseases, as well as the functioning of a stable system of social guarantees arising from employment relations.

The **Administrative Regional Court in its judgement of 15 August 2017 in Case No. A420221215** concluded that the fact that the injured employee had consumed alcohol at the time of the accident is undoubtedly one of the factors contributing to the accident. Still, in the given circumstances there is no direct causal link between the accident and the fact of alcohol consumption in order to apply Article 35.1 of Cabinet Regulation No. 950⁵³ and to state in the work accident report that the work accident is not the result of exposure to factors stemming from the working environment. The SLI, having assessed the

⁵¹ Neimanis J. 2004. *Psiholoģiskais terors darba vietā: juridiskie aspekti*. Jurista vārds. Nr 40.

⁵² Kaļķis, H. *Darba aizsardzība*. Atjaunots. 2021. Available: <https://enciklopedija.lv/skirklis/59673-darba-aizsardz%C4%ABba> [viewed 23.02.2023].

⁵³ Article 35.1 of Cabinet Regulation No. 950.

circumstances surrounding the work accident, found that the injured employee had not been instructed and trained in the work to be performed in connection with the work accident. The injured employee's blood alcohol concentration was found to be 2.18 per mille.⁵⁴ In such situations, the employer must address the issue of labour discipline, including termination of employment relationship by applying Article 101(1)(1) of the LL or by concluding an agreement on termination of employment relationship if the employer does not have evidence to apply Article 101(1)(1) of the LL.

According to the Constitution, the State protects people's health and right to live in a healthy environment.⁵⁵ At the same time, it should be noted that the right of every employee to safe and healthy working conditions is also enshrined in the LL, which also stipulates that upon entering into an employment relationship, an employee undertakes to comply with the established working procedures and the employer's orders. According to Article 5 of Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work, all employers have a duty to ensure the safety and health protection of employees at work. This obligation also applies to stress at work in so far as it may endanger the health and safety of employees. If stressful conditions cannot be eliminated, efforts should be made to reduce them and to involve all employees in stress reduction policies, to inform and train employees and management about stress, its causes, consequences and ways of reducing or treating its effects.

⁵⁴ Judgement of the Administrative Regional Court of 15 August 2017 in Case No. A420221215.

⁵⁵ Law of the Republic of Latvia: *Constitution of the Republic of Latvia*. 01.07.1993. Latvijas Vēstnesis, 43; 31.03.1994. Ziņotājs, 6; 30.06.1922. Valdības Vēstnesis, 141; 29.04.1993. Diena, 81. Available: <https://likumi.lv/ta/id/57980-latvijas-republikas-satversme> [viewed 26.02.2023].

The Administrative Regional Court in its judgement of 9 November 2016 in Case No. A420187115⁵⁶ concludes that when briefing an employee, the employer must take into account the fact that the employee is in close proximity to work equipment. The employer failed to provide the employee with the necessary information and written instructions on the work equipment and all the risks of the working environment, thus violating the requirements of Articles 86 and 89 of Cabinet Regulation No. 526. The SLI carried out an investigation of the work accident, which found that the employee had not been informed about the risks posed by the work equipment and had not been trained in the use of the work equipment. In such a situation, where the employee has suffered an accident, he/she may reasonably decide to terminate the employment relationship on the basis of Article 19 of the LPL.

2.4 Job Description as an Organisational Document in the Context of Termination of Employment Relationship

Article 28 of the LL provides that the employment relationship between an employer and an employee is governed by an employment contract. This means that the employment contract is a document which sets out the rights and obligations between the employer and the employee. It is important to note that Article 40 of the LL sets out, among other things, what must be specified in the employment contract. It should be emphasised that the legislator, by defining the information that must be included in an employment contract, has limited the freedom of the parties to determine the content of the contract. It follows that Article 40(2)(5) of the LL is a mandatory requirement and that the employment contract must contain a reference to the terms and conditions of employment applicable to the employment relationship. This is a reference to the structure of

⁵⁶ Judgement of the Administrative Regional Court of 9 November 2016 in Case No. A420187115.

the employment contract laid down in the LL, the purpose of which is to ensure the stability of the employment relationship, taking into account the indication in Article 39 of the LL that the employment contract shall be deemed to have been concluded at the moment when the employee and the employer have agreed on the work to be performed and the remuneration, as well as the employee's subsequent submission to the working arrangements and the employer's orders with a view to establishing a binding employment relationship between them.

A job description that is drafted accurately and in good faith is objective about the duties of the post, contains only relevant information, describes the role, aim and content of the post, defines the responsibilities and rights of the employee, is easy to update, and has been approved by the employee and the manager. The job description gives a clear picture of the job content for both the manager and the employees, avoids duplication of duties, reduces psychological tension and improves the working environment.

The author, studying the case law on termination of the employment relationship in disputes over employee or employer termination notice related to the employee's conduct or the working environment in the company, concludes that the absence or insufficient quality of job descriptions, as well as outdated work rules, incomplete procedure descriptions, formal instructions and other problems with organisational documents, are very common reasons for termination of the employment relationship.

The LL does not stipulate the necessity of a job description or its content, however, in the author's opinion, if the job description is based on a certain structure and detailed content, there would be fewer problem situations arising from different understanding of the duties to be performed and the procedure for recording misconduct would be simpler.

For the employee's expressed intent in signing the employment contract to be in line with the employer's intent, the employee must have read the job description and understood the position's place in the company's organisational structure, assessed his/her abilities and the remuneration offered for the duties and professional responsibilities involved before signing the employment contract.

3 Types of Termination of Employment Relationship within the Scope of the Social Function of Labour Law

In this chapter, the Author explains the types of termination of the legal relationship between the employee and the employer under Part C, Section 5 of the LL, examining the specificity of these types in the context of the framework of the CL. The Author examines in particular the possibility provided for in Article 114 of the LL for the employer and the employee to agree on the termination of the employment relationship by concluding a mutual agreement. Case law recognises that the termination of an employment contract is an expression of intent (a unilateral legal transaction) by the employee or the employer terminating the employment relationship, i.e. the expression of intent has the effect of creating legal consequences.⁵⁷

3.1 Legal Nature of the Employer-Employee Agreement on the Termination of Employment Relationship in the Context of Social Security

The agreement between the employer and the employee to terminate an employment relationship is one of the most common ways of terminating the employment relationship in practice. The agreement is an independent ground for termination of the employment relationship.⁵⁸

Case law recognises that the legality and validity of an agreement concluded by the parties is negotiable under civil law. Article 114 of the LL provides *expressis verbis* that an agreement between an employee and an employer on the termination of the employment relationship is a civil law contract. Consequently, the conclusion, amendment and termination of such an

⁵⁷ Kalniņš, E., 2005. *Privāttiesību teorija un prakse*. Rīga: Tiesu namu aģentūra, 288.

⁵⁸ Judgement of the Senate of the Supreme Court of the Republic of Latvia, Department of Civil Cases, of 7 March 2014 in Case No. SKC-1491/2014 (C32378712).

agreement, as well as its validity, are matters to be negotiated in accordance with the provisions of the CL. This understanding of Article 114 of the LL is also in line with Article 1 of the LL, which provides that not only the provisions of the Constitution and the LL, but also other laws and regulations, including the CL, are to be applied in employment relations.

The expression of intent of the employee and the employer in the act of agreement has the effect of creating legal consequences.⁵⁹

An agreement to terminate an employment relationship can be considered as a case of *rebus sic stantibus*.

Judgement of the Riga Regional Court of 9 June 2020 in Case No. C30746519,⁶⁰ where the claimant seeks the annulment of a mutual agreement on the termination of the employment contract because the negotiations between the employer and the employee, during which the agreement was concluded, took place on a Friday shortly before the end of working hours in the presence of a psychologist; during the conversation, the employer pointed out to the employee that her colleagues had complained about her conduct, that she would be given notice if she did not sign the agreement, that she would be able to receive unemployment benefits immediately, that she could not leave the premises while the agreement was being prepared. The Court noted that the decision to enter into the agreement was a matter of the employee's free will, but that the case did not establish that the actions of the negotiators had physically or psychologically influenced the employee's decision.

The author agrees with the Court's opinion and emphasises that the case concerns the annulment of a civil agreement, so the parties are not bound by the principle of the reverse burden of proof.

⁵⁹ Judgement of the Senate of the Supreme Court of the Republic of Latvia, Department of Civil Cases, of 11 June 2008 in Case No. SKC-371/2008.

⁶⁰ Judgement of the Riga Regional Court of 9 June 2020 in Case No. C30746519.

Taking into account the current wording of Article 114 of the LL and the case law, the Author sees a possibility to mitigate the problems arising in the application of Article 114 of the LL if its wording were amended to include the general requirements that must be included in the agreement between the employee and the employer upon termination of employment relationship.

3.2 Employee's Notice as a Unilateral Act of Intent, Its Social Aspects

The employee is not required to state the reason for the notice of termination, but it is advisable to refer to Article 100 of the LL, indicating the relevant part of the Article. “The right to terminate an employment contract cannot be restricted, as this would be contrary to the principle of prohibition of forced labour”.⁶¹

Article 100(5) of the LL provides that an employee has the right to terminate the contract immediately if there is a legitimate reason for doing so. The author would like to point out that the termination of an employment contract on the grounds of morality and fairness was already regulated before the adoption of the LL. Such a provision was and still is included in Article 2193 of the CL. The termination of an employee's contract of employment is regulated by two legal provisions – Article 2193 of the CL and Article 100(5) of the LL. These two legal norms have the same legal force as legal norms of the law and therefore horizontal conflict of laws is observed. However, the LL is a special legal norm issued by the legislator. The provisions of the CL are recognised as general and applicable in cases where the LL does not contain a special provision.⁶²

⁶¹ Slaidiņa, V., Skutāne, I. 2007. *Darba tiesības. Mācību grāmata*. Rīga: Zvaigzne ABC, 121.

⁶² Ose, D. 2007. *Darba tiesību pamati: Mācību līdzeklis*. Rīga: RTU Izdevniecība, 18.

Case law recognises that such “notice is based on the employee's subjective assessment of the situation and circumstances, coming to the categorical conclusion that it is not possible to continue employment relationship for those reasons”.⁶³

In its **judgement of 20 January 2015 in Case No. SKC-1793/2015**, the SC held that the employee's notice of termination pursuant to Article 100(5) of the LL is based on the employee's subjective view and assessment of the situation and circumstances existing at the time, which leads to the conclusion that it is impossible to continue employment relationship with the employer on the grounds of morality and fairness.⁶⁴ It is recognised in case law that the purpose of this provision is to protect the employee against conduct by the employer which is inconsistent with generally accepted notions of morality or ethics, offends the employee as a person, creates a situation which may be traumatic for the employee's physical or mental health, etc. If, in such a situation, the employee would have to work for another month in order to quit, as generally provided for in the LL, this could cause damage to the employee's mental health, which is why the law also provides for immediate termination of the employment relationship.⁶⁵

⁶³ Judgement of the Senate of the Supreme Court of the Republic of Latvia, Department of Civil Cases, of 6 April 2017 in Case No. SKC-308/2017. Available: <http://at.gov.lv/downloadlawfile/5142> [viewed 28.02.2023].

⁶⁴ Judgement of the Senate of the Supreme Court of the Republic of Latvia, Department of Civil Cases, of 20 January 2015 in Case No. SKC-1793/2015 (C17078813).

⁶⁵ Judgement of the Senate of the Supreme Court of the Republic of Latvia, Department of Civil Cases, of 11 October 2018 in Case No. SKC-860/2018 (C29564416).

The provisions of Article 100(5) of the LL have an “educative” function aimed at educating society, individuals and the employer,⁶⁶ since “education” takes the form of sanctions. Case law has established that the employee's notice and the subsequent obligation to pay severance have a punitive function for the employer, “due to its unjustifiable, unlawful, possibly unethical conduct”.⁶⁷

The author considers that the LL includes protection of the employee in the form of a sanction to be imposed on the employer. It is in the protection of the employee that another function of this norm is manifested – the function of ensuring social security - whose task is to protect the weaker subjects and reduce social disparities.

The **SC in its judgement of 8 December 2016 in case SKC-2672/2016** recognised that the purpose of the regulation of Article 100(5) of the LL is to protect the social rights of the employee, including their health, dignity and honour.⁶⁸ The legal framework of employee notice often seeks to balance the interests of the employee and the employer and the scope of the rights to be granted.

The author concludes that the employees' understanding of the termination of employment relationship under Section 100(5) of the LL is different from the scope of this provision, which was also emphasised by the

⁶⁶ Neimanis J. 2004. *Ievads tiesībās*. 26. Available: https://www.researchgate.net/profile/Janis-Neimanis/publication/328807991_Ievads_tiesibas_Introduction_to_law/links/5bff987e92851c63caafd868/Ievads-tiesibas-Introduction-to-law.pdf [viewed 25.03.2023].

⁶⁷ Judgement of the Senate of the Supreme Court of the Republic of Latvia, Department of Civil Cases, of 20 January 2015 in Case No. SKC-1793/2015, Clause 11.

⁶⁸ Judgement of the Senate of the Supreme Court of the Republic of Latvia, Department of Civil Cases, of 8 December 2016 in Case No. SKC-2672/2016.

Latgale Regional Court in the judgement of 19 July 2016 in Case No. C12118816.⁶⁹

Since neither the LL nor the CL specifies which actions taken by the employer are to be regarded as an important reason, according to case law and taking into account moral norms and ethical considerations, an important reason may be: the employer harasses the employee; the employer orders the employee to infringe copyright or instructs the employee to perform acts that violate the honour and dignity of a third party; the employer fails to pay the employee's wages for a prolonged period of time, resulting in the employee having no means of subsistence; the employee has experienced psychological bullying and is, therefore, unwilling to continue the employment relationship.

3.3 Employer's Notice on the Grounds of Circumstances Related to the Employee's Conduct as an Act of Intent of a Socially Responsible Person: Its Preventive Aspects

According to case law, the general rules of the law of obligations on the validity of a legal transaction also apply to notice as a unilateral expression of intent. The employer must therefore comply with both the provisions of the CL relating to notice as a unilateral transaction and the provisions of Article 101 of the LL relating to the provision of a reason appropriate to the situation in the notice, taking into account the principle of the reverse burden of proof.

The employer must justify the notice of termination by referring to the specific circumstance on which the notice is based. The employer may terminate the employment relationship with employees only if there is a legitimate reason for such termination, which is related to the employee's conduct, capacity or is

⁶⁹ Judgement of the Latgale Regional Court, Panel of the Court of Civil Appeals, of 19 July 2016 in Case No. C12118816. Available: <https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/285050.pdf> [viewed 01.03.2023].

caused by the industrial necessity of the undertaking, institution or service.⁷⁰ The cases of notice regulated by Article 101 of the LL are exhaustive and the employer cannot, by agreement with the employee, extend or supplement the list provided for in the law, but the parties have the possibility to mutually specify the cases of its application.⁷¹

An employer can terminate an employee's employment **on the basis of circumstances related to the employee's conduct**. For this reason, Article 101(1) of the LL lists 5 cases, the application of which requires compliance with certain procedures and the employer's understanding of the scope of the given wording. The legislator's intent with regard to such regulation of the LL clearly expresses the need to ensure order and legality in the performance of duties within the framework of employment relations, which draws attention both to the precise inclusion of the employee's duties in the employment contract and job description and to the employer's obligation to ensure safe working conditions and a working environment compliant with the regulatory enactments, as well as a work organisation appropriate to the scope of the undertaking's activity.

Employee's Conduct without Justifiable Cause in Breach of the Contract of Employment or the Established Working Arrangements

Article 101(1)(1) of the LL applies if the employee's misconduct is manifested in a failure to perform specific work duties, either as laid down in the employment contract (job description) or in the employer's rules of procedure, descriptions of procedures, instructions and other organisational documents. In

⁷⁰ General Conference of the International Labour Organisation. 1982. *Termination of Employment Convention*. Article 4. Available: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C158 [viewed 13.02.2023].

⁷¹ Latvijas Republikas Augstākās tiesas. 2004. *Tiesu prakses apkopojums „Par likumu piemērošanu, izšķirot tiesās strīdus, kas saistīti ar darba līguma izbeigšanas vai grozīšanu”*.

order for Article 101(1)(1) of the LL to apply, the employer must have three elements in place at the same time, which must be equally understood by both the employer and the employee: 1) the employee has breached the employment contract or the specified working procedures (the provisions of the job instructions recorded by the employer in the inspection report⁷² constitute grounds for termination of the employment contract under Article 101(1)(1) of the LL); 2) the breach has been committed without justifiable reason (the employer has recorded the fact that the employee systematically fails to report to work without justifiable reason;⁷³ 3) the breach is significant (the employer has provided reasons for the significance of the breach committed by the employee).⁷⁴

Whether a breach is to be considered significant must be assessed on a case-by-case basis, since the concept of “significance” is vague and the legislator has left it to the discretion of the person applying the legal norm to determine its content. In order for an employee's breach to be regarded as significant, the employer must prove that, by flagrantly disregarding the provisions of the contract of employment or the working procedures, the employee has caused, or could otherwise have caused, damage to the employer, affected the normal course of work or had some other adverse effect⁷⁵ (maintaining a rude and disrespectful working relationship with colleagues and customers during working hours, which has led to the improper performance of

⁷² Judgement of the Riga Regional Court, Panel of the Court of Civil Appeals, of 10 April 2017 in Case No. C29592815.

⁷³ Judgement of the Riga Regional Court, Panel of the Court of Civil Appeals, of 9 May 2017 in Case No. C32219716.

⁷⁴ Judgement of the Riga Regional Court, Panel of the Court of Civil Appeals, of 29 June 2015 in Case No. C26129314.

⁷⁵ Judgement of the Senate of the Supreme Court of the Republic of Latvia, Department of Civil Cases, of 29 November 2013 in Case No. SKC-1769/2013.

direct duties, endangering the safety of transport, loss of special tools, endangering the integrity of transport).⁷⁶

Loss of Employer's Confidence as a Result of Employee's Unlawful Conduct

The case law on Article 101(1)(2) of the LL has established that a number of preconditions are necessary for dismissal of an employee: (1) the employee's unlawful conduct has been established; (2) the unlawful conduct has been committed in terms of the employee's duties; (3) an employment contract has been concluded in which the employer's confidence is important and essential; (4) the breach is such as to justify the loss of the employer's confidence.⁷⁷

An employee's conduct shall be deemed unlawful not only if they violate a specific provision of a regulatory enactment, but also if, without exercising due diligence, they either fail to perform their duties or fail to perform them properly, as specified in the employment contract (job description) and other organisational documents of the employer (rules, instructions, descriptions of procedures) binding on the employee concerned.⁷⁸ The Panel of the Court of Civil Appeals of the Latgale Regional Court has indicated that, *inter alia*, in the application of Article 101(1)(2) of the LL, the harmful consequences will be a qualifying feature, which, if established, will aggravate liability. The consequences do not in themselves determine the existence of a breach but only

⁷⁶ Judgement of the Senate of the Supreme Court of the Republic of Latvia, Department of Civil Cases, of 9 February 2011 in Case No. SKC-299/2011; Judgement of the Senate of the Supreme Court of the Republic of Latvia, Department of Civil Cases, of 9 November 2012 in Case No. SKC-1275/2012.

⁷⁷ Judgement of the Latgale Regional Court, Panel of the Court of Civil Appeals, of 16 March 2017 in Case No. C26188215 (CA-0057-17).

⁷⁸ Judgement of the Senate of the Supreme Court of the Republic of Latvia, Department of Civil Cases, of 6 June 2012 in Case No. SKC-660/2012.

qualify the breach, which consists of unlawful conduct.⁷⁹ The SC has held that the assessment of the degree of unlawful conduct is a matter for the employer. And only the employer can decide whether he can trust an employee who has committed unlawful conduct.

On 24 September 2013, the Riga Kurzeme Regional Court found⁸⁰ that the employer had not fully justified their notice of termination under Article 101(1)(2) of the LL. If the employer's notice of termination is not legally justified or the procedure for termination of the employment contract has been violated, it must be declared null and void according to the court's judgement. The above is a problem which arises in practice in connection with the failure to draw up job descriptions in good time and in good quality in bodies with multiple reporting lines and parallel work with clients. This case also shows that employers solve HR problems by applying the grounds of Article 101(1) of the LL, rather than improving the organisational structure of the working environment by defining job duties and subordination and by creating process description schemes.

Conduct of an Employee Contrary to Good Morals Incompatible with the Continuation of Employment Relationship

In order for the employer to lawfully apply Article 101(1)(3) of the LL, the notice of termination must also specify the particular factual circumstances which correspond to and constitute the grounds for the notice, including an objective assessment of the employee's act or omission and the grounds for

⁷⁹ Judgement of the Latgale Regional Court, Panel of the Court of Civil Appeals, of 11 July 2016 in Case No. C25074015 (CA-0237-16).

⁸⁰ Judgement of the Riga Kurzeme Regional Court of 24 September 2013 in Case No. C28286213 (C-2862-13/10).

finding such conduct to be contrary to good morals.⁸¹ The grounds for termination may be limited to the employee's conduct contrary to good morals in connection with the performance of their duties, and the employer must justify why it is not possible to continue the employment relationship. This means that the employer must prove that: (1) the employee acted contrary to good morals in the performance of their duties; and (2) such conduct is incompatible with the continuation of the employment relationship.

The Senate of the Supreme Court has expressed the opinion on the grounds for dismissal referred to in Article 101(1)(3) of the LL that the grounds for a notice may be an employee's conduct related to the performance of employment duties, and the employer must justify that the employee's specific conduct prevents the continuation of employment relationship.⁸² The content of the concept of 'good morals' is not defined in the legislation and is not discoverable by it; it is to be regarded as an open or vague concept which gives only a rough idea of the possible direction in which the content of the concept is to be sought.⁸³ In Roman law, *boni mores* (Lat.) – “good morals” (also “good habits, customs”) means the customary principles of good, honest and virtuous (moral) behaviour (*mores populi, mores antiqui*) recognised and traditionally observed by society, nation or community. The concept acquired legal weight

⁸¹ Judgement of the Senate of the Supreme Court of the Republic of Latvia, Department of Civil Cases, of 20 April 2018 in Case No. SKC-213/2018(C12177516).

⁸² Judgement of the Senate of the Supreme Court of the Republic of Latvia, Department of Civil Cases, of 27 October 2010 in Case No. SKC-928/2010.

⁸³ Meļķiņš, E. 2000. *Tiesību normu iztulkošana*. Likums un Tiesības, 9.

when something was done in violation of what customary feelings demanded of good morals (*adversus/ contra bonos mores* (Lat.) – against/contrary to good morals).⁸⁴

Modern case law and legal scholarship recognise that the concept of good morals is not only social but also legal in nature, i.e. it consists not only of generally accepted moral norms that lay down the rules of conduct that society or a section of it considers necessary to observe but also of legal-ethical principles and values enshrined in positive law, including national constitutions.⁸⁵

It has been held in case law that, since the legislator has not laid down a definition of good morals, this, because of the particularly qualified degree of uncertainty, is to be regarded as a general clause, the content of which is left to the discretion of the legal practitioners. Consequently, any employer deciding on the termination of an employment contract should know what it means to act contrary to good morals in the performance of duties within the scope of an employment relationship.

Taking into account Professor K. Torgan's observation that immoral misconduct and conduct contrary to good morals are not abstract and not to be interpreted according to the subjective discretion of the parties, the Author concludes that an employee could be dismissed on the grounds of the notice under analysis if their conduct was concrete and proven.⁸⁶ The author considers that the assessment of immoral behaviour or conduct of an employee may be

⁸⁴ Tarasova, D., Apsītis, A. 2023. *Darba likumā ietvertā jēdziena "labi tikumi" sākotnējā jēga un būtība romiešu tiesībās*. Available: <https://juristavards.lv/doc/283584-darba-likuma-ietverta-jedziena-labi-tikumi-sakotneja-jega-un-butiba-romie-su-tiesibas/> [viewed 15.07.2023].

⁸⁵ Slicāne, E. 2005. *Labi tikumi un to nozīme darījumu tiesiskajās attiecībās*. *Jurista Vārds*, 15(370). Available: <http://www.juristavards.lv/doc/106661-labi-tikumi-un-to-nozime-darijumu-tiesiskajas-attiecibas/> [viewed 19.02.2023].

⁸⁶ Torgāns, K. 1998. *Civillikuma komentāri*. Rīga: Mans īpašums, 31.

applied in professions which are related to the performance of educational functions, such as teachers.

Since the concept of good morals is contained in Article 1415 of the CL⁸⁷, which provides that an unauthorised and indecent act the object of which is contrary to religion, law or good morals or which is intended to circumvent the law cannot be the object of a legal transaction, this applies to the performance of an employment contract as a legal transaction in such a way that employment relationship is terminated with an employee who purposely acts in an unlawful or immoral manner.

Judgement of Riga City Pardaugava Court of 1 February 2017 in Case No. C28345716⁸⁸, where the employer applied Article 101(1)(3) of the LL. At the same time, the employer proved and the court found that Article 101(1)(3) of the LL was applied in a justified and necessary manner.

The author reiterates the need, when establishing an employment relationship, to carefully draft the employment contract and, in the workplace, to define the working arrangements and the limits of the employee's conduct in specific situations in the organisational documents, so that the process of assessing the employee's conduct is clear and consistent with the content of the provision under review. As a qualitative example, the employment contract of the multinational company Fortum⁸⁹ contains provisions on the company's attitude towards the use of intoxicating substances, the employer's right of control and the assessment of the employee's conduct in the context of Article 101(1)–(5) of the LL.

⁸⁷ Law of the Republic of Latvia: *Civil Law*. 20.02.1937. Valdības Vēstnesis. Article 1415, 41. Available: <https://likumi.lv/ta/id/225418-civillikums> [viewed 01.03.2023].

⁸⁸ Judgement of Riga City Pardaugava Court of 1 February 2017 in Case No. C28345716 (C-2199-17/5).

⁸⁹ Kravale, S. *Reibuma izskaušanas darbā juridiskie aspekti – darba devēja iespējas un problēmjaūtājumi*. Available: http://stradavesels.lv/Uploads/2016/01/08/03_Tiesu_prakse_reibuma_negadijumi_Kravale_08062015.pdf [viewed 02.03.2023].

Employee's Intoxication by Alcohol, Drugs or Toxic Substances at the Time of the Performance of Duties

An employer may terminate an employee's employment contract if the employee is intoxicated by alcohol, drugs or toxic substances while performing their duties, as provided for in Article 101(1)(4) of the LL.

The Panel of the Court of Civil Appeals of the SC has qualified as conduct contrary to good morals within the meaning of Article 103(1)(3) of the LL a situation where an employee was intoxicated by alcohol at an event organised and paid for by the employer while negotiating with important clients of the company, which disgraced the employer and significantly damaged the employer's reputation; moreover, the employee's behaviour endangered the health and life of fellow employees. Such conduct is incompatible with the continuation of the employment relationship since the employer cannot rely on the employee to act in accordance with the generally accepted ethical and moral standards of society in the performance of his duties in the future.⁹⁰ Quoting the above-mentioned court judgement, it should be pointed out that the grounds for dismissal referred to in Article 101(1)–(5) of the LL are interrelated, both in the specific wording of the offence committed and in the application of the relevant provision of law.

In the author's opinion, the term “intoxication” used in Article 101(1)(4) of the LL is not precise enough. Intoxication is a state of loss of balance, clarity of perception and judgement (usually due to exposure to substances). In the **judgement of the Senate of the SC of 24 August 2012 in Case No. SKC-1041/2012**, it was stated that intoxication was established by the appearance of the person being tested, but the amount of alcohol found in the employee's breath, 0.09 per mille, did not indicate that he was under the influence

⁹⁰ Judgement of the Senate of the Supreme Court of the Republic of Latvia, Department of Civil Cases, of 27 October 2010 in Case No. SKC-928/2010.

of alcohol or that he was intoxicated by alcohol. The Senate refers to Article 28 of Cabinet Regulation No. 394 and to the interpretation of the Health Inspectorate on the difference between being under the influence of alcohol and being intoxicated by alcohol.

The author emphasises that the LL does not provide for any gradation of the degree of intoxication; only the fact of alcohol intoxication is relevant, which, as it is recognised in the legal literature, can be established both by a medical examination and by a record drawn up by the employer.

A number of factors must be taken into account and assessed when deciding whether to terminate an employee's contract of employment: (1) the seriousness of the offence committed, (2) the circumstances under which it was committed, (3) whether the employee has a previous history of being intoxicated by alcohol, (4) the personal characteristics of the employee, (5) the work performed by the employee before the offence.⁹¹

The Author, having analysed **the judgement of the Riga Regional Court, Panel of the Court of Civil Appeals, of 5 May 2015 in Case No. 30745112**, has obtained grounds that, according to the legal literature, the employer is entitled to choose any means of proof provided for in the CPL. In the case in question, the employer drew up a report on the employee's alcohol intoxication at the workplace, during working hours, indicating specific signs of the employee's alcohol intoxication – the manner of speech, behaviour, groggy gait and the smell of alcohol, proved the employee's alcohol intoxication.

⁹¹ Valsts darba inspekcija, 01.07.2017. *Kā rīkoties, ja darbinieks ierodas darbā iereibis?* Available: <https://itiesibas.lv/raksti/atbild-eksperts/darbatiesibas/ka-rikoties-ja-darbinieks-ierodas-darba-iereibis/11833> [viewed 27.02.2023].

In addition, the employee's conduct caused idle time, resulting in damage to the company.⁹²

In the judgement of the Zemgale Regional Court of 6 June 2019 in Case No. CA-0366-19/9, the court incorrectly used the term “alcohol influence”, stating that “0.38 per mille alcohol influence in no way interfered with the employee's performance of his duties”, however, later in the judgement the court referred to the interpretation of both legal theory and case law that if the amount of alcohol detected does not exceed 0.5 per mille, this does not indicate either that the employee is under the influence of alcohol or that he is intoxicated by alcohol.⁹³ This shows that there is no uniform practice on how an employee's condition should be defined when the alcohol concentration detected does not exceed 0.5 per cent.

The author considers that, in order to prevent disputes on the existence of intoxication, the employer should provide in the employment contract or other internal regulations of the employer for a mandatory obligation of the employee to undergo an intoxication test if the employer suspects that the employee is intoxicated by alcohol at the workplace. Failure to comply with this obligation would give the employer the possibility to terminate the employment relationship with the employee and would discipline the employee for misconduct. In addition, the author considers that it would not be correct to use the term “intoxication” in an employment relationship, but rather to use the term “under the influence,” as it would be wrong to assume that a person can be intoxicated by drugs and toxic substances. A person may be under the influence of drugs and toxic substances.

⁹² Judgement of the Riga Regional Court, Panel of the Court of Civil Appeals, of 5 May 2015 in Case No. 30745112. Available: <https://manas.tiesas.lv/eTiesasMvc/lv/nolemumi> [viewed 27.02.2023].

⁹³ Judgement of the Zemgale Regional Court of 6 June 2019 in Case No. CA-0366-19/9.

The author considers that it is necessary to amend Article 101(1)(4) of the LL on the grounds of safety and to create more clarity for both employers and employees.

Employee's Gross Misconduct regarding Labour Protection Regulations and Endangering the Safety and Health of Others

In order for an employer to terminate an employment contract under Article 101(1)(5) of the LL, he must be guided by the provisions of the LPL and, on its basis, Cabinet Regulation No. 359 of 28 April 2009 “Labour Protection Requirements in Workplaces”.⁹⁴ In order to terminate an employee's employment relationship pursuant to Article 101(1)(5) of the LL, it is necessary to establish two concurrent elements: (1) the employee has breached labour protection regulations; (2) the breach of labour protection regulations is gross; (3) the employee has endangered the safety and health of other persons by their actions.

On 27 January 2014 the Latgale Regional Court⁹⁵ examined and found that there are no grounds to invalidate the employer's notice to the claimant under Article 101(1)(5) of the LL, as the claimant admits and there is no dispute in the case that he took the client's tractor at the construction site without the employer's permission and drove it to a remote village shop after leaving the construction site and came back to the construction site.

⁹⁴ Cabinet Regulation of 28 April 2009 No. 359 “*Labour Protection Requirements in Workplaces*”. *Latvijas Vēstnesis*, 69. Available: <https://likumi.lv/ta/id/191430-darba-aizsardzibas-prasibas-darba-vietas> [viewed 01.03.2023].

⁹⁵ Judgement of the Latgale Regional Court, Panel of the Court of Civil Appeals, of 27 January 2014 in Case No. C12153913.

One of the tasks of Article 101(5)(1) of the LL is to draw the attention of employees to the need to comply with the requirements laid down for the protection of their health and safety and to preserve their ability to work, thereby pointing out the possible consequences of non-compliance. If the employer has fulfilled its obligations, but the employee themselves fails to comply with any of the requirements laid down and endangers themselves and others, such conduct is incompatible with the continuation of the employment relationship.

If the employee's breach of labour protection regulations has only endangered their personal safety, this cannot yet be grounds for termination on the basis of this provision. The actual danger to others must be understood as the consequences of the breach of labour protection regulations.⁹⁶ If it is proved that the employee has not been acquainted with labour protection regulations and has not been given a briefing in the prescribed manner, the dismissal of the employee under Article 101(1)(5) of the LL is not lawful, even if all the other conditions exist. The emphasis in assessing a breach of labour protection regulations should be on the fact that the breach of labour protection regulations is obvious and is the direct cause of the consequences that have occurred (damage to the health of other workers, death). In case law, gross misconduct regarding labour protection regulations is a breach that is obvious to all, to the workers, to the employer and to the court, i.e. the fault of the offender is obvious.

The author considers that the legislator should clarify the qualification of gross misconduct in Article 101(1)(5) of the LL.

⁹⁶ Rācenāja, N. 2009. *Darba līgums kā tiesību avots*. Rīga: Biznesa augstskola "Turība", 48.

3.4 Key Aspects of the Legal Framework of Employer's Notice due to Employee's Conduct in Finland, Estonia and Lithuania

In Finland, matters arising out of the employment contract are basically regulated by a law passed by the Parliament called the Employment Contracts Act.⁹⁷ The legal framework for employer's notice in Finland and Latvia differs not in the letter but in the social situation and the role of employment relationship in the context of public security and human well-being. The fact that the Finnish law does not list the grounds for employer's notice, as is the case in Latvia, but that it is the employer's task to determine these cases indicates that the legislator recognises the employer as a socially responsible and professionally competent subject. In the context of the framework of employment relationship, the legislator also ensures a healthy working environment in the undertaking by providing that, where the employer's dismissal has been declared unlawful by a court, the employer is obliged to pay substantial compensation rather than to reinstate the employee. In Finland, the employer is not obliged to pay severance to the employee. This issue is dealt with in the area of municipal and social security payments, relieving the employer of such tasks, which also indicates the quality and stability of employment relationship in Finland. There is also a general trend towards notice periods, which are formally set much higher than in Latvia, but in the interests of social welfare, employers have the right to negotiate with employees to reduce notice periods and pay compensation to ensure that they can support themselves while they are looking for another job. Thus, in Finland, the employer can be considered to have the discretion to give the employee time to look for another job, regardless of the reason for the notice,

⁹⁷ Finland's Ministry of Economic Affairs and Employment. 2001. *Employment Contracts Act*. Available: <https://www.finlex.fi/en/laki/kaannokset/2001/en20010055.pdf> [viewed 01.03.2023].

by agreeing on compensation, the amount of which does not have to be based on average earnings.

In Estonia, matters arising from the employment contract are regulated by the Employment Contracts Act of the Republic of Estonia (the Estonian Act)⁹⁸. The author concludes that the Estonian Act provides for similar cases of employer's notice related to employee's conduct as in the Labour Law. It is important to emphasise that both national regulations contain a certain form of notice – the employer must give notice to the employee in writing. The Estonian Act strictly requires the employer to observe the grounds for dismissal, although this does not affect the validity of the notice. It should also be pointed out that if the termination is based on misconduct or lack of abilities (lack of capacity), the employer is obliged to give the employee a written warning before the termination. However, the provision includes a general clause: if, in accordance with the principle of good faith, in view of the seriousness of the misconduct or for other reasons, the employee cannot expect such a warning from the employer; the contract of employment may be terminated without prior warning.⁹⁹ It is the inclusion of the general clause that draws the employer's attention to the social function of the provision. The fact that the Estonian Act requires employers to give employees a reasonable amount of time to look for a new job is also a testament to the unity of labour law and social security in Estonia. Moreover, in Estonia, the employer is obliged to grant such a period in all cases of dismissal of an employee, regardless of the reason for the dismissal.

⁹⁸ Law of the Republic of Estonia: *Employment Contracts Act of the Republic of Estonia*. 17.12.2008, No. RT I 2009, 5, 35, Article 88(1). Available: <https://www.riigiteataja.ee/en/eli/530102013061/consolide> [viewed 02.03.2023].

⁹⁹ Latvijas Brīvo arodbiedrību savienība. 2012. *Darbinieka un darba devēja uzteikuma regulējums Baltijas valstīs*. Available: http://www.sif.gov.lv/nodevumi/nodevumi/3418/atlaisanas.no.darba.regulejums.balt.valstis_01.2012_gala.pdf [viewed 01.03.2023].

The Estonian Act, like the LL, contains a specific notice period, which gives the employee time to familiarise himself/herself with the content of the employer's notice and time to look for a new job. Under the Estonian Act, the employer is entitled to terminate the employment contract without prior notice to the employee, taking into account the principle of good faith and the seriousness of the employee's misconduct, which has a preventive effect.

The author concludes that the Estonian Act, by including an obligation for the employer to give the employee time to look for a new job in any case of termination, is socially responsible as it reduces social tensions and creates more opportunities for the employee to find a job instead of registering as unemployed. It can also be said that the Estonian Act socially protects the rights of the employee by not allowing the employer to terminate the employment relationship immediately if the employee does not agree. However, the author considers that such protection is not required within the LL.

In Lithuania, the Lithuanian Labour Code (the Lithuanian Law) regulates issues arising from employment contracts.¹⁰⁰ The Lithuanian Law lists the circumstances that cannot be grounds for dismissal, such as an employee's trade union membership, age, gender, race, sexual orientation, and time spent in military service. The framework of the Lithuanian Law for the determination of cases of employer notice is flexible and allows employers to include the grounds for dismissal in a socially responsible way in a generally expressed clause. The framework of the Lithuanian Law for the notice period sets out the cases in which an employer may dismiss an employee without complying with the notice period, i.e. the cases for which the employer may impose a disciplinary sanction on the

¹⁰⁰ Law of the Republic of Lithuania: *Labour Code of the Republic of Lithuania*. Article 58, 14.09.2016, No. XII-2603, TAR, 19.09.2016, No. 23709. Available: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89> [viewed 02.03.2023].

employee,¹⁰¹ thereby drawing attention to breaches of internal or external regulatory provisions.

The Lithuanian Law regulates the payment of severance. Severance is paid according to the employee's length of service with the company. Article 58(4) of the Lithuanian Law provides that before taking a decision on termination of employment, the employer shall request an explanation from the employee in writing, and Article 58(5) provides that the decision on termination of employment relationship due to the employee's misconduct shall be taken by the employer after ascertaining the extent of the damage caused by the employee to the company and/or the environment. The dismissal must be proportionate to the damage suffered.¹⁰² This underlines the importance of the principle of proportionality since the employer has various mechanisms to punish misconduct by the employee, including the right to make socially responsible decisions based on morality and fairness, as well as ethical and moral considerations, where these are included in the employer's organisational documents.

The author concludes that the Baltic States have different notice periods. While in Latvia the notice period depends on the grounds for dismissal, in Lithuania, it depends on whether the employee is in the vulnerable group or on the grounds for dismissal, and in Estonia it depends on the employee's length of service with the company. In Latvia and Estonia, the law allows the collective agreement to set a shorter notice period for the employee and a longer notice period for the employer. But the Lithuanian Law does not provide for such

¹⁰¹ Latvijas Brīvo arodbiedrību savienība. 2012. *Darbinieka un darba devēja uzteikuma regulējums Baltijas valstīs*. Available: http://www.sif.gov.lv/nodevumi/nodevumi/3418/atlaisanas.no.darba.regulejums.ba.lt.valstis_01.2012. [viewed 02.03.2023].

¹⁰² Law of the Republic of Lithuania: *Labour Code of the Republic of Lithuania*. Article 58. 14.09.2016, No. XII-2603, TAR, 19.09.2016, No. 23709. Available: <https://www.etar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89> [viewed 02.03.2023].

notice.¹⁰³ This also reflects the diversity of employers' cooperation with social partners and local authorities.

The procedure for challenging a notice of termination is the same for Lithuania and Latvia – it can only be challenged in court, but in Estonia, a notice of termination can be challenged before the Labour Disputes Commission, which is set up by the local offices of the Labour Inspectorate. The Author believes that this framework is effective because it reduces the workload of the courts with standard cases and these commissions have the possibility to examine problems in more detail, making decisions that are closer to a compromise.

The laws and regulations of all the countries in question require that reasons are given for the notice of termination, that the employee's explanation are requested, that the notice is in writing, that the social and educational aspects of the termination of employment relationship are highlighted and that preventive measures are taken.

3.5 Right of an Employer to Bring an Exceptional Legal Action for the Termination of Employment Relationship as a Social Necessity

As an exception, an employer has the right to bring an action before a court within one month for the termination of an employment relationship in cases other than those referred to in Article 101(1) of the LL, if he has an important reason.¹⁰⁴ The legislator has recognised that such a reason is any circumstance which, **on grounds of morality and mutual fairness**, makes it

¹⁰³ Latvijas Brīvo arodbiedrību savienība. 2012. *Darbinieka un darba devēja uzteikuma regulējums Baltijas valstīs*. Available: http://www.sif.gov.lv/nodevumi/nodevumi/3418/atlaisanas.no.darba.regulejums.balt.valstis_01.2012_gala.pdf [viewed 02.03.2023].

¹⁰⁴ Law of the Republic of Latvia: *Labour Law*. Article 101(5). 06.07.2001, Latvijas Vēstnesis, 105 (2492); 09.08.2001, Ziņotājs, 15. Available: <http://likumi.lv/doc.php?id=26019> [viewed 29.02.2023].

impossible to continue an employment relationship. The question of whether an important reason exists shall be determined by the court in its discretion.

In deciding whether to terminate an employment contract under Article 101(5) of the LL, the court must consider, on a case-by-case basis, in the light of the facts and evidence in the case, whether there are important circumstances which, beyond considerations of morality and mutual fairness, preclude the continuation of employment relationship.¹⁰⁵

In order to justify the termination of an employment relationship pursuant to Article 101(5) of the LL, one of the other grounds for termination of employment set out in the legal provision must not exist – there must be a completely independent ground and case, therefore, from the outset the court assesses whether one of the other grounds for termination of employment by the employer does not apply and only then analyses whether the concept of important reason is applicable here and specifies its essence. The court must take into account considerations of morality and fairness, which are linked to ethical and moral norms and values in society – these are non-material values which in some way affect or may affect the employer.¹⁰⁶ In such a case, an employment relationship is not terminated by the employer's notice, which is possible only in the cases referred to in Article 101(1) of the LL, but by a court judgement, which means that it is in the public interest to terminate employment relationship in question and that such action is socially necessary.

According to the Senate, in order to terminate an employment relationship under Article 101(5) of the LL, there must be a completely independent ground which cannot be linked to the cases specified in Article 101(1) of the LL.¹⁰⁷

¹⁰⁵ Judgement of the Senate of the Supreme Court of the Republic of Latvia, Department of Civil Cases, of 8 April 2013 in Case No. SKC-1219/2013).

¹⁰⁶ *Ibid.*

¹⁰⁷ Judgement of the Supreme Court of the Republic of Latvia, Department of Civil Cases, of 20 March 2008, Case No. SKC-211/2008.

Since the LL does not provide that the circumstance must arise due to the employee's conduct, the court only needs to establish that the circumstance in question, for reasons of morality and fairness, prevents the continuation of an employment relationship. Morals are qualities which a person possesses as an individual and which are manifested not only at work but in conduct in general. In the context of employment relations, considerations of morality are essential for the continuation of an employment relationship.¹⁰⁸ When bringing an action before a court for the termination of an employment relationship on the basis of Article 101(5) of the LL, the employer is not required to seek the prior consent of a trade union.

¹⁰⁸ Decision of the Senate of the Supreme Court of the Republic of Latvia of 6 October 2009 in Case No. SKC-1012/2009.

4 Termination of Employment Relationship as an Act of Intent of the Parties

Since the establishment, modification and termination of a legal relationship must achieve a specific objective, the decision to achieve that objective must be based on specific reasons, as explained in Chapter 2 of the Thesis. Decision-making is a process carried out by a person and resulting in an expression of intent on the part of both a legal and a natural person.

Although the contract of employment specifies both the employer and the employee when an employment relationship is established, there is a contradiction in various disputes, which are also settled in court, that the employee considers the employer, i.e. the person who expressed intent by formulating requirements, providing instruction, training, requesting reports, organising the working environment, etc., to be a department or branch of the employer. The employee wants to be loyal, i.e. to treat the employer favourably, correctly, respectfully in his or her own workplace, in accordance with the norms, rules, but has not identified the organisational structure of the company, their position, subordination, cooperation, responsibility, because they have not received a job description explaining their position in the organisational structure of the employer. The employer's claim was brought to court for this very reason in Case No. C28345716 of the Riga City Pardaugava Court of 1 February 2017.¹⁰⁹

As regards the formation and expression of the intent of the legal person in the context of the termination of an employment relationship, it should be remembered that intent is essentially a psychological process, but that it also has a legal function as a regulator of conduct. Thus, the legal entity as an employer, by regulating its own conduct through various internal regulations based on

¹⁰⁹ Judgement of Riga City Pardaugava Court of 1 February 2017 in Case No. C28345716.

external regulations, also regulates the conduct of the natural person – the employee – by requiring compliance with certain rules, instructions and procedures, which in turn affect the maintenance, improvement, modification or termination of an employment relationship. It can be said that the lack or absence of intent on the part of the employer with regard to the above, i.e. to the incomplete formulation and disregard of the rules of conduct, must unambiguously lead to certain legal consequences, as is the case when the intent of the natural person is directed contrary to what is accepted by social norms. With regard to employment relationships, their content and also employment protection issues, the employer's intent must be made as clear as possible to all employees, firstly in the employment contract with a compulsory annex – the job description, then in the rules of procedure, instructions, safety rules and other organisational documents, so that each employee knows precisely his or her functions, support mechanisms, cooperation opportunities, confidentiality issues and the limits of professional responsibility.

The author agrees with the legal scholars' opinion that, especially in employment relations, the intent of the employer (legal person) should be understood as those rules of conduct aimed at regulating the activities of the legal person and the rules to which the employer's (legal person's) conduct corresponds.¹¹⁰

The basic problem of professional ethics is often the basis for employee notices, citing different attitudes, problems of psychological and/or emotional bullying and double standards. For example, on 7 January 2021, the Panel of the Court of Civil Appeals of the Riga Regional Court, hearing Case

¹¹⁰ Понятие воли юридического лица. Available: <https://lawbook.online/dissertatsii-grajdanskomu-pravu-kniga/ponyatie-voli-yuridicheskogo-14514.html> [viewed 20.02.2023].

No. C30407917¹¹¹ analysed the different perceptions of the employee and the employer regarding the company's internal rules of procedure and their interpretation in the context of the performance of duties in order to establish the employer's true intention in determining the organisation of work in the company. A similar analysis was carried out by the Riga City Court of Latgale Suburb on 14 January 2020 in Case No. C29431218.¹¹²

Since relationships at work have a significant impact on both productivity and the content of an employment relationship, the author analysed the connection between the development of job descriptions and rules of procedure and the reasons for termination of an employment relationship in subsection 2.4 of the Thesis. The author, after studying case law and publications by labour law specialists, as well as the legal aspects of HR management, recognises that the intent of the legal person as regards the legal aspects of HR management is expressed in the company's organisational documents. Intent of the individual, on the other hand, is a mental process which, in an employment relationship, results in legal decisions, or decisions which comply with the rules laid down by the employer (the employer's intent) or do not comply and the individual's actions are considered unlawful.

The author considers that employers need uniform guidelines explaining the legal as well as the psychological aspects of the termination of an employment relationship. This would promote procedural economy by saving the parties' resources in terms of the need to hire lawyers and spend time in court, to organise mediation or to resolve the dispute in accordance with the provisions of the Labour Dispute Law.

¹¹¹ Judgement of the Riga Regional Court, Panel of the Court of Civil Appeals, of 7 January 2021 in Case No. C30407917.

¹¹² Judgement of the Riga City Court of Latgale Suburb of 14 January 2020 in Case No. C29431218.

5 Legal Framework on the Procedure for Termination of Employment Relationship as a Guarantee of Personal Social Security

Social rights are very important, but at the same time they are specific and distinct human rights, because the exercise of these rights depends on the economic situation and the resources available in each country – it is closely linked to each country's capabilities.¹¹³

International human rights instruments define social rights as general obligations of the State, which each State implements according to its own resources. Each State has a wide margin of discretion in designing its social security system, using a specific legal framework consisting of both substantive and procedural provisions. At the same time, international law obliges states to undertake and to achieve the fullest possible realisation of social rights within the limits of available resources and with the appropriate means at an increasing pace. In this context, the provisions of the LL, which lay down the procedure for termination of employment contracts, also guarantee social security by protecting the parties from social tension and economic loss.

In case law, there are often cases where the employer's notice of termination is legally justified, but the employer has not complied with one of the statutory requirements relating to the procedure for termination of the employment contract. The Senate of the SC has recognised¹¹⁴ that failure to comply with or breach of the notice procedure may be grounds for invalidating an employer's notice, but not every failure to comply with or breach of an

¹¹³ Tiesībsarga birojs. *Cilvēka pamattiesības*. Available: <https://www.tiesibsargs.lv/lv/pages/cilvektiesibas/socialas-un-ekonomiskas-tiesibas/tiesibas-uz-socialo-nodrosinajumu/> [viewed 20.02.2023].

¹¹⁴ Latvijas Republikas Augstākā tiesa 2005. *Tiesu prakses apkopojums. Jautājumi par Darba likuma normu piemērošanu*, 18. Available: <http://at.gov.lv/lv/judikatura/tiesu-prakses-apkopojumi/civiltiesibas/> [viewed 20.02.2023].

employer's obligation in itself gives rise to the legal consequences referred to above. It follows that the LL establishes a notice procedure which guarantees social security in the event of termination of employment relationship, as it draws the attention of the parties concerned to the legal and economic consequences which will arise in the event of non-compliance with this procedure. However, any situation which may *prima facie* involve a breach of the established procedure must be assessed in the light of proportionality and other principles of labour law.

The most important requirements of the LL with regard to the notice procedure from the social security point of view are that when terminating an employment contract, it is very important for the employer to follow the correct procedure for termination of employment relationship. First of all, the written form of the notice of termination of employment provided for in the LL must be complied with, the circumstances on which the termination is based must be notified to the employee in writing and must be specified to such an extent as to enable the reasonableness of the notice of termination to be verified. The court is not entitled to assess and take into account circumstances which were not stated in the notice or which do not arise therefrom. The same could also apply to the employee who is being dismissed. This means that, in the event of non-compliance with this provision, the employer's notice may be declared null and void and the employee reinstated. This regulation serves as a guarantee of the social security of the individual and also has an educational function in terms of educating the employer as an enforcer of the law. The ECHR has also established that the employer is obliged to indicate the reason for the termination of an employment relationship, stating that the failure to indicate the reason for the

termination infringes Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.¹¹⁵

The author would like to point out another aspect of social security, which underlines the importance of a detailed statement of the reasons for the notice, since the employee, in the absence of full information on the facts on which the notice is based, has to take legal action within one month to determine the lawfulness of the notice. If the employer does not justify the notice of termination and, if necessary, is allowed to provide the court with all the necessary documents to justify the notice, this would be contrary to the right to a fair trial. On the other hand, reducing the number of unfounded applications reduces the workload of the courts and ensures the right of others to a fair trial.

The LL provides for the possibility for the employer to withdraw the notice if the employee agrees to it. Unilateral withdrawal of notice would not be permissible, as the employee, having received notice, would expect to have to find another job, and a situation where the employee has already found another job, but the employer unilaterally withdraws the notice, would also not be acceptable. This provision protects the employee against inconsistent and indeterminate action by the employer.

The failure to request an explanation from the employee before terminating the contract cannot in itself be the basis for a finding that the employer has breached the termination procedure. The SC also found in its judgement of 28 January 2004 in Case No. SKC-38/2004 that the employee had repeatedly given explanations during the official investigation, but had refused to give explanations after the investigation had been completed. The Court therefore concluded that the employer had obtained sufficient information to assess misconduct under Article 101(2) of the LL and that the absence of an

¹¹⁵ *Convention for the Protection of Human Rights and Fundamental Freedoms: an International Multilateral Document*. 13.06.1997. Latvijas Vēstnesis, 143/144.

explanation in cases where the employee had the opportunity to give one but refused to do so could not be regarded as misconduct.¹¹⁶

Article 110(1) of the LL provides that an employer may not terminate the employment contract of an employee who is a member of a trade union without the prior consent of the trade union concerned if the employee has been a member of the trade union for more than six months, except in the cases provided for in Article 47(1) and Article 101(1)(4), (8) and (10). If the contract of employment is to be terminated in the case referred to in Article 101(1)(7) and (11) of the LL, the employer shall inform and consult the trade union in advance. The LL does not require the employee to inform the employer of his trade union membership. Nor does the LL provide for the employer's obligation to take into account the trade union's position during the consultation on the employee's notice. Article 101(6) of the LL provides for an exception to the general procedure, which obliges the employer to ascertain before terminating the employment relationship with a given employee whether a special legal provision applies, i.e. the employer must ascertain whether the employee is a member of a trade union. It is recognised in case law that the monitoring of the respect of the employee's trade union membership rights when the employment relationship is terminated on the basis of the employer's notice is initially carried out by the trade union. If the employee is a member of a trade union and if the employee has been a member of the trade union for more than six months, the employer must, in accordance with the procedure laid down in Article 110 of the LL, obtain the consent of the trade union before exercising the right to terminate the employment contract, which must be ascertainable at the time of notice.

¹¹⁶ Latvijas Republikas Augstākā tiesa. *Tiesu prakse lietās par individuālajiem darba strīdiem*. 2010/2011. Available: <https://www.at.gov.lv/files/uploads/files/docs/petijumi/darba%20stridi.pdf> [viewed 11.07.2023].

Article 101(6) and Article 110(1) of the LL set out in mandatory form the rules that an employer must comply with when giving notice of termination to an employee who is a member of a trade union. The employer's deviation from the obligation laid down in Article 101(6) and Article 110(1) of the LL, irrespective of the motives for such deviation, shall be treated as gross misconduct regarding the termination of employment relationship with a trade union member employee and shall therefore constitute an independent ground for granting a claim aimed at remedying the violation of the employee's rights.¹¹⁷ This confirms the author's view of the importance of social norms in society and in the company as a social system, where the trade union as the employee's representative also plays an important role.

¹¹⁷ Judgement of the Senate of the Supreme Court of the Republic of Latvia, Department of Civil Cases, of 26 April 2013 in Case No. SKC-1144/2013. (C17097710).

Conclusion

Legal assumptions which, while traditionally rooting the termination of an employment relationship in the individual rights of the legal subject (both employer and employee), ignore the social aspects of the issue, which affect a much wider range of legal subjects. In particular, legal assumptions are not focused on the social function of labour law and its fulfilment. The study confirms that the currently underused potential of the social function of labour law leads to labour disputes, which generally hinder the stability of the socio-economic development of the country. The need to study labour law, and more specifically the potential of the social function of the termination of an employment relationship, in the context of the social function of the termination of employment relationship has been triggered by a number of topical issues related to the termination of an employment relationship, which require immediate and appropriate legal solutions to meet the needs of contemporary society. There is a need to streamline the process of implementing employer-employee termination notices, i.e. to address possible shortcomings in the legal framework in order to reduce the likelihood of disputes between the employee and the employer in cases of termination of an employment relationship.

The problem of termination of an employment relationship is most clearly identified in the act of intent of the employer, as a socially responsible person, in termination notices based on circumstances related to the conduct of the employee. The study of the reasons for the termination of an employment relationship points to the interaction between labour law and the legal framework for labour protection, including issues related to the working environment.

The problems identified in the study are based on shortcomings and inaccuracies in legislation and the modern world's transformed understanding of the mechanisms of termination of employment.

The legal framework for the termination of employment has not been modernised, but the legal system has been supplemented by legislation which has a significant indirect impact on the social aspect of the termination of employment relationship. Termination of an employment relationship does not take place in isolation, they are subject to, and applicable to, legislation that regulates employment issues in a broader sense, such as human capital issues, the silver economy, entrepreneurship, sustainable development of the economy, etc.

The Aim of the study has been achieved, research questions have been answered. The answers to the research questions are structured and divided into several parts. At the same time, the following conclusions and proposals are drawn:

1 Problems arising from deviations from socially acceptable norms of conduct and management as a result of the interaction between employment relationship and the work environment

Conclusions:

- 1.1 The procedure for termination of employment and the procedural documentation to be drawn up are laid down in the LL, but in each individual company they are influenced by the social and organisational factors of the working environment, which depend, *inter alia*, on the management model of the company.
- 1.2 The right to privacy also includes the right of an individual to form relationships with other individuals, including professional and economic relationships, and the right to socialise in the working environment. Such relationships are formed within the framework of employment relations at both national and international level, which draws attention to the social function of labour law and the mechanisms for its implementation.

- 1.3 When the employer refers to the criteria for the fulfilment of the employee's obligations, these criteria should be defined as precisely and as detailed as possible. In this way, both the employee and the employer have a common view on the nature, extent, time and place of the work to be performed, in compliance with the requirements of Article 49 of the LL. This is not possible without a job description attached to the contract of employment and the company's organisational documents drawn up and updated in good time.
- 1.4 For the employee's expressed intent in signing the employment contract to be in line with the employer's intent, the employee must have read the job description and understood the position's place in the company's organisational structure, assessed his/her abilities and the remuneration offered for the duties and professional responsibilities involved before signing the employment contract.
- 1.5 Problems in the working environment are one of the most common reasons for the termination of an employment relationship, whether by the employer, the employee, the courts or third parties.
- 1.6 Mobbing issues need to be addressed within the scope of the LPL.
- 1.7 Disputes of an emotional nature between the employee and the employer or line manager cannot be resolved by legal means.
- 1.8 The regulation of the termination of employment relationship contains a complex structure, which involves both the personal qualities of the parties involved and points to an objective legal obligation of the employer to prove the correctness of its conduct by applying the provisions of the LL and developing a strategy of conduct that is in line with the law, approved by the team and supported by evidence.

- 1.9 In practice, mobbing is difficult to identify and equally difficult to prove – especially as the perpetrator's treatment of the victim may not in itself be unlawful. What is unlawful is the purpose of the act - to make the victim's presence in the workplace unbearable and thus to get him/her to leave.
- 1.10 When assessing the individual facts of the alleged acts of emotional violence in isolation from each other, it is not possible to draw objective conclusions about the employer's alleged psychological pressure and use of emotional violence against the person.
- 1.11 The duration of psychological bullying must be assessed in conjunction with the other characteristics of psychological bullying, in particular the nature, purpose and systematic nature of the acts.

Proposals:

- 1.1 Given that the incomplete definition of the duties to be performed by the employee in the employment contract, the subjects' insufficient understanding of the employment contract regarding the content, rights and obligations of the subjects, the problems of the working environment often result in the termination of the employment relationship. Based on the findings of the study, the author proposes to supplement Article 40 of the LL according to the provisions of the CL on a coherent expression of intent. In order for an employment contract to contain a coherent expression of the parties' intent, it is not sufficient for the employment contract to specify the employee's trade, position, specialty (occupation) according to the Classification of Occupations and a general description of the agreed work. In addition, the job description is an integral part of the contract of employment.

Article 40(2)(5) of the LL shall read as follows: “5) the trade, position, specialty (hereinafter referred to as “occupation”) of the employee according to the Classification of Occupations and a general description of the agreed work, *with an annex to the employment contract - job description*”.

- 1.2 Taking into account the social nature and consequences of the reasons for termination of an employment relationship, the author proposes to amend **Article 29(7) of the LL to read as follows:** *“Harassment of a person within the meaning of this Law shall mean subjecting a person to conduct that is undesirable from the point of view of that person, related to his or her belonging to a particular sex or to psychological harassment, including conduct of a sexual nature if such conduct has the purpose or effect of violating the dignity of the person and creating an intimidating, hostile, humiliating, degrading or offensive environment”.*
- 1.3 Given that the national policy in the field of labour protection is aimed at taking preventive measures and drawing up legislation which fulfils a social function and thus guarantees the social security of employees, the Author considers it necessary to supplement Article 14(4) of the LL “Workplace safety briefings and training in labour protection shall be comprehensible to employees and appropriate to their occupational training. The employer shall ensure that the employee has understood the briefings and training on labour protection” to be read as follows: *“Workplace safety briefings and training in labour protection shall be regular, up-to-date, comprehensible to the employees and appropriate to their professional training.”*

In practice, the employer must ensure that and how the employee has understood the workplace safety briefings and their practical relevance in the workplace, as well as the relevance and social meaning of the safety training.

The author proposes that Article 17(6) of the LPL be supplemented to read as follows: “to participate in the employer's briefings and training in labour protection and to learn, *independently or under the employer's guidance, the safety requirements necessary for the performance of the work in order to exercise socially responsible conduct in the workplace*”.

In **Article 17(8) of the LPL, the following shall be added:** “to cooperate with the employer or the labour protection officer in ensuring a safe working environment and working conditions so as not to endanger the safety and health of the employee, *and to ensure the legal and socially responsible implementation of employment relationship in the long term*”.

2 Problems arising from the choice of the subjects of employment relationship as to the implementation of the termination of employment relationship

Conclusions:

2.1 When analysing the forms of termination of employment relationship from the perspective of the subjects, the subjects' understanding and awareness of the legal and material consequences of the choice should be taken into account. It can be seen that it is to a large extent the social perception of the subjects of the need for termination of employment relationship, linked to moral and ethical categories such as justice and fairness, that results in the misapplication of the legal framework, both by the employer and the employee, which leads to the conclusion that termination of employment relationship as an act of intent of the subject is not only a legal category, but also a psychological one.

- 2.2 An agreement to terminate an employment relationship can be considered as a case of *rebus sic stantibus*. According to this principle, any agreement must be viewed in the light of the circumstances existing at the time of its conclusion. Thus, it is presumed that the parties have linked the existence of the contract to those circumstances, so that a radical and unforeseen change in those circumstances may be grounds for declaring the contract null and void.
- 2.3 The employer is bound by the employee's notice because the employee's notice is a free expression of his intent and this unilateral expression of intent is binding on the employer and the employer is therefore not entitled to refuse to accept the notice.
- 2.4 The employee and the employer interpret Article 100(5) of the LL differently. The employees understand only the first sentence of this provision, emphasising the wording "important reasons". Employers, on the other hand, also place the greatest legal emphasis on the second sentence of the provision, which interprets the wording "important reasons" to refer only to a circumstance which, on grounds of morality and fairness, prevents the continuation of an employment relationship.
- 2.5 The provisions of employee's notice involve the legislator's attempt to balance the interests of the employee and the employer in an employment relationship and the scope of the right to terminate the employment relationship.
- 2.6 By stipulating a notice period in the employment contract, but by providing for a notice period in the law applicable only in cases where the notice period is not provided for in the employment contract, a situation is achieved where no limitation on the notice

period is in fact imposed. Such a system gives the parties more freedom to agree on shorter or longer notice periods.

- 2.7 The concept of fairness requires that an ethical decision should be based on principles of equality, fairness, without any bias. In employment relationship, an ethically correct decision is one that respects the rights of the people about whom the decision is made. Fairness in management means fairness in employment procedures: employment relationship between managers and subordinates is based on objective, reasonable criteria, without discrimination.

Proposal:

In order to comply with the legal framework for the termination of employment relationship, to gain certainty as to the true intention of the subjects and to understand the legal consequences of notice, the author proposes, in the light of observations made in practice, that **Article 114 of the LL should read as follows:**

“Article 114. Agreement between the employee and the employer on the termination of employment relationship at the conclusion of the contract.

(1) The employee and the employer may terminate the employment relationship by mutual agreement and by a written contract containing the following provisions:

- 1) basis for the employment relationship (contract of employment, date of its conclusion);
- 2) nature of the employment contract (fixed-term or open-ended);
- 3) the date on which employment relationship is terminated;
- 4) payment of compensation for untaken leave;
- 5) payment of severance;
- 6) possibilities of cancelling the contract.

(2) The contract may also contain other provisions agreed upon between the employee and the employer, including provisions on:

- 1) regulation of restriction of competition
- 2) regulation of non-disclosure of trade secrets
- 3) compliance with rules on the protection of personal data.”

Such a regulation would draw employers' attention to the fact that an agreement is a civil contract which creates obligations to be fulfilled (*pacta sunt servanda*) by both parties. It would also draw the employee's attention to the fact that the terms of the agreement are the basis for whether or not the parties can agree on these socially relevant matters.

3 Issues related to the possibility and necessity of termination of employment relationship as a prevention of social deviance in the workplace

Conclusions:

- 3.1 The preventive aspect of termination of employment relationship shows a tendency towards the protection of public interests in relation to the possibilities of exercising the rights of the subject, which gives rise to the conclusion that termination of employment relationship due to the conduct of the employee is a means by which the legislator draws attention to the importance of social security.
- 3.2 Communication and conduct between employees have an impact on the working environment and create motivations that must be taken into account when implementing management policies and when establishing, amending or terminating the employment relationship.
- 3.3 The terms “rules of procedure” and “terms of employment contract” cover not only individual internal rules issued by the employer but also external laws and regulations governing the duties of members of certain professions at work.

- 3.4 An employee's conduct shall be considered unlawful not only if they violate a specific provision of law, but also if, without exercising due diligence, they either fail to perform their duties or fail to perform them properly, as specified in their job description and in the organisational documents (rules of procedure, instructions, decisions, etc.) issued by the employer and binding on the employee concerned.
- 3.5 The assessment of a breach of trust is based on both the generally accepted view of wrongful conduct in society and the attitude of the employer to the misconduct of the employee in question. At the same time, an account shall also be taken of the impact of the misconduct in question on the particular employment relationship, on the specific working environment and on the employer's reputation.
- 3.6 The employer may independently assess the employee's conduct and its lawfulness and therefore does not need an initial opinion of a competent body on the unlawfulness of the employee's conduct.
- 3.7 Unethical misconduct in employment relationships and conduct contrary to good morals are not abstract and are not to be interpreted according to the subjective discretion of the parties, and therefore an employee may be dismissed if their conduct has been concrete and proven.
- 3.8 The concept of good morals is not only social but also legal. It is not only generally accepted moral norms which determine the rules of conduct which society or a section of it considers necessary to observe, but also the legal-ethical principles and values enshrined in positive law.

- 3.9 The content of the employment contract draws attention to the requirements of the LL and the company in implementing employment relationships and maintaining an organisational culture consistent with the principle of social responsibility.
- 3.10 The employer's right to establish that an employee is under the influence of alcohol, drugs or toxic substances at work is not limited, as the employer may choose and use any means of proof listed in the CPL.
- 3.11 In private law, the fault of the person who violates the labour protection regulations is a condition for the offender to be punished on the basis of legal provisions and is an integral part of the private law offence, together with unlawful conduct, causation and damage.

Proposals:

- 5.5 The provisions of the LL contain all the principles of the training reimbursement clause, except that the employee would be obliged to reimburse the employer for training expenses if he/she terminates the employment relationship on their own initiative or is dismissed for unlawful conduct. It is therefore necessary **to amend Article 96(1) of the LL to read as follows:** *“An employee who, upon leaving their employment, is sent for professional training or further qualification shall retain their job. The employer shall bear the costs of the professional training or further qualification. The employer shall bear the costs of professional training or further qualification, except in the cases provided for in Article 100 and Article 101(1) to (5) of the LL”.*
- 5.6 It would be useful to use the term “reasonable notice period” in the LL, as the length of the notice period could be determined as necessary, but at present the introduction of such a concept would

complicate the application of the provision, as the introduction of a new general clause would again require the creation of new case-law explaining the term.

5.7 The author considers that the phrase “while performing their duties” in Article 101(3)(1) of the LL limits the employer's discretion in cases where an employee acts or behaves contrary to good morals outside working hours or during a break. It is therefore necessary to delete the words “while performing their duties” from Article 101(3)(1) of the LL and to word the paragraph as follows: “[...] the employee has acted contrary to good morals and such conduct is incompatible with the continuation of employment relationship”.

5.8 It is necessary to amend Article 101(1)(4) of the LL so that the employer has the right to terminate an employment relationship not only if the employee is found to be intoxicated by alcohol or other substances, but also if the employee is found to be under the influence of alcohol or other substances. In the author's opinion, the finding that the employee is under the influence of alcohol or other substances is grounds for the conclusion that the employee's conduct may endanger the employee, others and the employer's reputation.

It is therefore necessary to amend **Article 101(4) of the LL to read as follows:** *“[...] the employee is under the influence or intoxicated by alcohol, drugs or toxic substances while performing his/her duties. The employer shall prove these circumstances by the means of proof provided for in the CPL”.*

5.9 A serious breach of labour protection regulations constitutes a qualifying offence, which requires an assessment that in turn depends on a number of other criteria to be assessed in their totality: the fault (intent) of the worker, the obvious danger to the health and

safety of others. Consequently, it is necessary to **clarify Article 101(1)(5) of the LL** to read as follows: *“the employee has grossly violated labour protection regulations and has endangered the safety and health of others by committing an obvious violation of labour protection regulations, which is the direct cause of the consequences that have occurred (damage to the health of other employees, death)”*.

6 Problems arising from the nature of the expression of a person's intent in the termination of an employment relationship and the termination of that relationship by the courts of general jurisdiction

Conclusions:

- 6.5 The employer's intent is contained in the company's organisational documents (rules of procedure, instructions, job descriptions, etc.), while the employee expresses their intent explicitly, including by following or breaking the rules contained in the organisational documents. It can be seen that it is the quality of the content of the organisational documents that has a major impact on an employment relationship and on its termination, which leads to the conclusion that the termination of an employment relationship is closely linked to the organisational arrangements for the establishment and existence of an employment relationship.
- 6.6 Since every legal person has an organisation consisting of the resources of the legal person and its employees, and every legal person has direct and personal capacity in the person of its employees, the employees are the bearers of the intent of the legal person, but not the subjects of the rights exercised by the intent of those employees as the intent of the legal person.

- 6.7 The employer, by regulating its own conduct through various internal regulations based on external regulations, also regulates the conduct of the natural person – the employee – by requiring compliance with certain rules, instructions and procedures, which in turn affect the maintenance, improvement, modification or termination of an employment relationship.
- 6.8 The inclusion of the employer's intent, as a rule of conduct of the undertaking, in the organisational documents (rules of procedure, job descriptions, safety instructions) allows for a reasoned assessment of the compliance of the employer's intent expressed in the notice with the requirements of the regulatory enactments.
- 6.9 In an employment relationship, the process of the formation of the employee's intent depends to a large extent on the intent expressed by the employer in the organisational documents, which has an impact on the company as a whole, determining its values, work culture, organisation, economic and psychological situation.
- 6.10 HR management of an undertaking is carried out using specific methods, which are a set of defined ways and means by which a manager influences individual employees or a group of employees with the aim of coordinating their activities and achieving the performance of defined tasks in accordance with the intent of the undertaking as expressed in the organisational documents.
- 6.11 When assessing the individual facts of the alleged acts of emotional violence in isolation from each other, it is not possible to draw objective conclusions about the employer's alleged psychological pressure and use of emotional violence against the person.

- 6.12 It is for the court to assess the factual basis for the termination of an employment relationship. The subject matter of the action is the civil right which has been violated or is contested and which the person seeks to have protected, while the cause of action consists of the factual circumstances on which the action is based. The annulment of a notice of termination of employment for lack of a legal basis is concerned with reinstatement and the recovery of average earnings for involuntary absenteeism, not with the recovery of severance. A person only becomes entitled to severance when an employment relationship is terminated. Since the subject-matter of the action is the right to severance, the court is required to assess the factual basis for the termination of an employment relationship in conjunction with the legal provisions to which the legal consequences of the event to be decided relate.
- 6.13 The most important instrument that could bring about a significant change in the implementation of labour dispute resolution policy is the establishment of a labour dispute commission in the SLI, as is the case in Estonia. In the author's view, it is important that, together with the establishment of a labour dispute commission, a number of measures are implemented to ensure the development of an appropriate legal framework, the provision of material and technical support, and the involvement of competent specialists and social partners. The author recognises that this requires more sustained and systematic preparation, with a significant increase in the capacity of the SLI. In order to ensure the effectiveness of the labour dispute commission as a structural unit of the SLI, it is necessary to secure the support of the social partners for this solution, to attract experienced and competent specialists with extensive experience in

labour dispute resolution to work in the commission and to provide adequate information support so that employers and employees are aware of the possibility of resolving labour disputes in the labour disputes commission.

Proposals:

The author proposes to draw the attention of the courts to the court's task of examining the arguments on emotional abuse and to focus on assessing the situation in a comprehensive manner, taking into account that the court's approach must not be formalistic from the point of view of procedural or substantive compliance, since the court's aim in such a case is not only to examine the legality of individual actions of the undertaking (institution), but also to examine a set of identifying signs of psychological impact. Since systematic emotional abuse of an employee in the working environment is a valid reason for termination of an employment relationship within the meaning of Article 100(5) of the LL, as it clearly corresponds to the wording of the legislator “on the grounds of morality and fairness”, the Author proposes **to amend Article 100(5) of the LL by wording it as follows:**

“An employee shall have the right to terminate their contract of employment in writing without complying with the notice period laid down in this Article if they have an important reason. Any circumstance which, on the grounds of morality and fairness, prevents the continuation of an employment relationship *where the employee is subjected to systematic emotional abuse in the working environment* shall be regarded as such a reason”.

This does not mean that, in employment relations, the intent of the employer (legal person) should be understood as those rules of conduct aimed at regulating the activities of the legal person and the rules to which the employer's (legal person's) conduct corresponds. In the case of third parties, such as the employee, the employer, as the legal person, must make its intent known in such

a way that the third party can rely on the outwardly visible conduct of the legal person and does not have to bear the risk that this conduct does not comply with the actual rules of conduct (company culture) which are in accordance with the true intent of the legal person. The values of an organisation can be overt and covert. Revealed values are usually articulated by management and enshrined in the organisation's internal documents.

The Thesis identifies the issues at stake and reflects the diversity of existing case-law. During the elaboration of the study, the author concluded that it is necessary to amend the LL and the LPL in order to focus the legal perspectives on the social function of labour law. It should be noted that by expressing the legal framework (LL and LPL) more clearly and unambiguously, it would be made more precise and specific, as a result of which contradictory interpretations would be excluded, which in turn would promote the rule of law, create a procedurally more economical approach, thus saving both private and public resources.

List of Publications, Reports and Patents on the Topic of the Thesis

Scientific publications in journals listed in international databases: (*Web of Science, SCOPUS, ERIH PLUS*):

1. Apsītis, A., Tarasova, D., Dinsberga, J., Joksts, J. *Contract for Work (locatio conductio operis) of Transportation and Rustic Praedial Servitude of Way (servitus viae) as Roman Law Institutions for Needs of Rural Logistics*. Rīgas Stradiņa universitāte, Juridiskās fakultātes elektroniskais juridisko zinātnisko rakstu žurnāls „Socrates”. 2021, 3 (21), 234–243. ISSN: 2256-0548. <https://doi.org/10.25143/socr.21.2021.3.234-243>
2. Tarasova, D., Apsītis, A. *Nomas jeb īres līguma piemērošana darba tiesisko attiecību reglamentēšanai jeb romiešu darbu īres līgums un romiešu darbuzņēmuma līgums*. Rīgas Stradiņa universitāte, Juridiskās fakultātes elektroniskais juridisko zinātnisko rakstu žurnāls “Socrates”. 2017, 3 (9), 91–016. ISSN: 2256-0548. <https://doi.org/10.25143/socr.09.2017.3.91-106>
3. Tarasova, D. *Darba tiesisko attiecību izbeigšanas problemātika DL 101. panta pirmās daļas 3. un 4. punktā noteiktajos gadījumos*. Rīgas Stradiņa universitāte, Juridiskās fakultātes elektroniskais juridisko zinātnisko rakstu žurnāls, “Socrates”. 2016, 3 (6), 99–107. ISSN:2256-0548. <https://doi.org/10.25143/socr.06.2016.3.99-107>
4. Šāberte, L., Tarasova, D., Palkova, K. *Ārstniecības personas tiesības paust savu reliģisko pārliecību darba tiesiskajās attiecībās*. Rīgas Stradiņa universitāte, Juridiskās fakultātes elektroniskais juridisko zinātnisko rakstu žurnāls „Socrates”. 2021, 2 (20), 188–211. ISSN:2256-0548. <https://doi.org/10.25143/socr.20.2021.2.188-211>

Scientific articles in peer-reviewed journals published in Latvia:

1. Tarasova, D., Apsītis, A. *Darba likumā ietvertā jēdziena “labi tikumi” sākotnējā jēga un būtība romiešu tiesībās*. Jurista Vārds, Nr. 28 (1294), 2023. <https://juristavards.lv/doc/283584-darba-likuma-ietverta-jedziena-labitikumi-sakotneja-jega-un-butiba-romiesu-tiesibas/>
2. Tarasova, D. *Darbnespējas lapas anulēšana – vai pamats darba līguma uzteikumam*. Jurista Vārds, Nr. 17/18 (1179/1180), 2021, 44.–46. <https://juristavards.lv/doc/278739-darbnespejas-lapas-anulesana-vai-pamats-darba-liguma-uzteikumam/>

3. Tarasova, D. *Problematics within Notice of Termination of an Employment Contract in connection with Proposed Amendment. Abstract.* Rīga Stradiņš university international interdisciplinary conference on social science "Places". 2 April, 2019. ISBN 978-9934-563-45-4, p. 60. https://places-conference 2019.rsu.lv/sites/default/files/documents/PLACES_abstracts_book.pdf
4. Tarasova, D. *Darbinieku skaita samazināšanas tiesiskie aspekti ārkārtas situācijā.* Rīgas Stradiņu universitātes Juridiskās fakultātes starptautiskais zinātniski praktiskā konference "Tiesiskās sistēmas aktuālās problēmas". Tēzes, 2020. gada aprīlis.
5. Tarasova, D. *Employer`s right to terminate the employment relationship with the employee for an important reason by bringing an action to court. Abstract.* The 61st International Scientific Conference of Daugavpils University. April 11-12, 2019. https://dukonference.lv/files/DU_61_starpt%20zinatn_konf_tezes_DRAFT.pdf
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7. Tarasova, D., Apsītis, A. *Romiešu tiesību jēdziena "labi tikumi" (boni mores) izpratne Latvijas DL 101. panta pirmās daļas 3. punkta piemērošanas problemātikas kontekstā.* Rīgas Stradiņa universitāte. 2018. gada zinātniskā konference. ISBN 978-9934-563-29-4. Rīga: RSU, 2018. XXVIII, 313 lpp.
8. Tarasova, D. *Tiesību akti nodarbinātības aizsardzībai ES dalībvalstu tiesiskās politikas aktuālie izaicinājumi.* Rīgas Stradiņa universitāte. 2018. gada zinātniskā konference. Tēzes. ISBN 978-9934-563-29-4. Rīga: RSU, 2018. XXVIII, 317.lpp.
9. Tarasova, D. *Darba tiesisko attiecību izbeigšanās ar darbinieku - arod biedrības biedru. Administratīvā un Kriminālā Justīcija.* 2017; Nr. 4 (81): 52–57 lpp.

Oral presentation at a local scientific conference:

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