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## TERMINATION OF AN EMPLOYMENT CONTRACT UPON UNILATERAL NOTICE OF AN EMPLOYEE IN LITHUANIA

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**Abstract.** *The theoretical aspects and practical application of the termination of an employment contract upon an employee's notice are analyzed in the paper. An employee can terminate an employment contract by his/her notice either without specifying any reason or due to some serious reasons. The problems of the regulation of the grounds for the expiry of an employment contract are discussed and analyzed by comparison with the corresponding regulations in other European countries. Rulings of the Supreme Court of the Republic of Lithuania are discussed to reveal the problems existing in practice. Conclusions and suggestions for the improvement of laws providing conditions for homogeneous interpretation of legal provisions are presented.*

**Keywords:** *employment contract, termination of the employment contract upon the notice of an employee.*

## Introduction

Loss of employment makes negative influence on a person's economic and social status; therefore, the grounds for the expiry of an employment contract are strictly regulated by law. Passed in 2002, the Labour Code<sup>1</sup> of the Republic of Lithuania regulates the conclusion, performance and grounds for the expiry of an employment contract. Termination of an employment contract upon the notice of an employee is one of the most frequently used grounds for the expiry of an employment contract in Lithuania. It is related to the principle of the prohibition of forced labour established by the Constitution<sup>2</sup>. According to the abovementioned constitutional provisions, every person has the freedom of choice of employment and in no case he/she can be forced to perform any involuntary activity. In order to ensure the implementation of those principles, the right of the termination of an employment contract upon the notice of an employee is provided for in labour laws.

The aim of this research is to analyze the application of the termination of an employment contract upon the notice of an employee in practice and help to improve the provisions of the Labour Code giving recommendations for the changes to be made.

To reach the aim, the following tasks are set: to analyze and discuss the legal regulation of the termination of an employment contract upon the notice of an employee; to analyze the practice of the Supreme Court of Lithuania in order to disclose the problems of practical application of the termination of an employment contract upon the notice of an employee; to summarize theoretical and practical problems related to the termination of an employment contract upon the notice of an employee and suggest possible solutions.

The topic is relevant and original although seven years after the adoption of the Labour Code in Lithuania have passed. There exist no scientific research or studies on the termination of an employment contract upon the notice of an employee even though it is one of the most frequently used grounds for the expiry of an employment contract. As it is reflected in court practice, there are a lot of disputes regarding the termination of an employment contract upon the notice of an employee. The provisions of the Labour Code, which at first glance seem to be precisely formulated, provoke a lot of problems of their application in practice. Some of the aspects of this topic have been analyzed in scientific publications by I. Nekrošius, R. Macijauskienė, V. Tiažkijus, etc. The abovementioned authors focused on the analysis of labour law problems, examined theoretical and practical problems of the termination of an employment contract upon the notice of an employee. The contribution of the authors of the present article consists of the systematic analysis of the provisions of the Labour Code granting a right of the termination of labour relationship upon the notice of an employee focusing on current court practice.

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1 Labour Code of the Republic of Lithuania. *Official Gazette*. 2002, No. 64-2569.

2 Constitution of the Republic of Lithuania. *Official Gazette*. 1992, No. 33-1014.

## 1. General Grounds for the Expiry of an Employment Contract in Lithuania

As stated in Article 93 of the Labour Code, an employment contract is an agreement between an employee and an employer whereby the employee undertakes to perform work of a certain profession, speciality, qualification or to perform specific duties in accordance with the work regulations established at the workplace, whereas the employer undertakes to provide the employee with the work specified in the contract, to pay him the agreed wage and to ensure working conditions as set in labour laws, other regulatory acts, the collective agreement and by agreement between the parties. Employment contract is one of the most important institutes of labour law and reasonably it is given much attention.

An employee is regarded as a less advantaged party in an employment relationship; therefore, the grounds for the expiry of an employment contract are strictly regulated by law. This relates to the protection of a constitutional right for the freedom of choice of employment. Unlike civil contracts, employment contracts can be terminated only on the grounds provided by law.

Legal labour relations between parties, their duties and rights become invalid after the termination of an employment contract. Several conceptions are related to the termination of labour relations: termination of an employment contract, expiry of an employment contract, and dismissal from work. All of those conceptions are used in the Labour Code and they all mean the termination of labour relations, but with different significance. Commentary of the Labour Code states that the conception ‘expiry of an employment contract’ has the broadest meaning. It involves all cases when rights and duties of the parties of an employment contract are fully terminated, no matter on whose initiative it is done. ‘Termination of an employment contract’ characterises one of the ways of the termination of an employment contract when an employment contract is terminated due to voluntary actions of the parties of an employment contract or the actions of other authorised state institutions or persons<sup>3</sup>. In other words, an employment contract may be terminated after one of the parties of an employment contract expresses his/her will to terminate a contract or it may be terminated due to the requirement of third persons. ‘Dismissal from work’ is a procedure and a result of the expiry of an employment contract which leads to the termination of the rights and duties of parties. This conception is often used when discussing the method of terminating an employment contract and its legal effects. According to G. Dambrauskienė<sup>4</sup>, the grounds for the expiry of an employment contract are such legal circumstances (juridical facts) the existence of which allows an employment contract to be terminated.

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3 *Lietuvos Respublikos darbo kodekso komentaras*. Antras tomas [Commentary on the Labour Code of Republic of Lithuania. Part II]. Vilnius: Justitia, 2004, p. 121–122.

4 Dambrauskienė, G., et al. *Lietuvos teisės pagrindai* [Fundamentals of the Lithuanian Law]. Vilnius: Justitia, 2004, p. 576.

Article 124 of the Labour Code provides that an employment contract shall expire: 1) upon the termination thereof on the grounds established by the Labour Code and other laws; 2) upon the liquidation of an employer without legal successor; 3) upon the death of an employee.

According to V. Tiažkijus<sup>5</sup>, the grounds for the expiry of an employment contract can be divided into groups according to the will of the parties:

- 1) grounds on which an employment contract expires under certain voluntary actions by parties of a contract and actions or circumstances depending on the will of parties (this group includes the termination of an employment contract by agreement between the parties, upon the notice of an employee, and on the initiative of an employer)<sup>7</sup>
- 2) grounds (juridical facts) provided for in labour laws, collective agreements, if they are not less favourable to the employee, when the termination of an employment contract does not depend on the will of parties (when an employee is deprived of special rights to perform certain work in accordance with the procedure prescribed by laws; upon the demand of bodies or officials authorised by laws; upon the death of an employee, etc.).

The classification of the grounds for the expiry of an employment contract is very important from the legal point of view because the consequences of the expiry vary (for example, terms of notice, amount of severance pay etc.). According to R. Macijauskienė<sup>6</sup>, the grounds for the termination of an employment contract are quite important for the employee, as they can have an impact on the employee's further employment opportunities (for example, it is important whether an employee was dismissed from work upon his/her notice, or because of a breach of labour discipline).

In practice, the termination of an employment contract by agreement between the parties, upon the notice of an employee, and on the initiative of an employer are the most frequent. It should be noted that only one of the legal grounds for the termination of an employment contract shall be used. In other words, multiple legal grounds for the termination of an employment contract are impossible.

Under the Labour Code of the Republic of Lithuania, an employee has a right to unilaterally terminate an employment contract only in accordance with the procedure prescribed by law and upon prior notice to the employer. The grounds for the expiry of an employment contract linked to the initiative of an employee to terminate employment relations include the following:

1. Termination of an employment contract upon the notice of an employee without a specified reason (Article 127.1 of the Labour Code);
2. Termination of an employment contract upon the notice of an employee for valid reasons (Article 127.2 of the Labour Code);

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5 Tiažkijus, V. *Darbo teisė: teorija ir praktika* [Labour Law: Theory and Practice]. Vilnius: Justitia, 2005, p. 413.

6 Macijauskienė, R. Darbo sutarties pasibaigimas ir nutraukimas [Expiration and Termination of an Employment Agreement]. *Jurisprudencija*. 2006, 10(88): 72.

3. Termination of an employment contract due to circumstances beyond the employee's control (Article 128 of the Labour Code).

Only the termination of an employment contract upon the notice of an employee without a specified reason (1) will be analyzed in this paper.

## 2. Termination of an Employment Contract upon the Notice of an Employee with no Specified Reason

### 2.1. Individual Rights of the Parties

The grounds for the termination of an employment contract upon the notice of an employee provided for in Article 127(1) of the Labour Code guarantee the implementation of a constitutional principle of freedom to choose employment. Following the provisions of the abovementioned article, every employee has an individual right to terminate an employment contract on his/her own initiative. An employee is not obliged to give explanation for such a decision or its motives. The law just provide a period of notice to be given to the employer in advance<sup>7</sup>.

The Labour Code stipulates that an employee shall be entitled to terminate an open-ended employment contract as well as a fixed-term employment contract prior to its expiry by giving an employer a written notice thereof at least 14 days in advance. A collective agreement may specify a different period of notice, but it shall not exceed one month. The purpose of the term of employee's notice is to give an employer an opportunity to find a new employee and keep a continuous working process. In other words, the term of notice is set to protect the interests of an employer. Upon the expiry of the period of notice, the employee is entitled to terminate his/her employment, whereas the employer must execute the termination of the employment contract and settle accounts with the employee. Accordingly, the abovementioned provisions give an employee the right to terminate a fixed-term employment contract (but also an open-ended employment contract) after giving an employer a notice in advance. Following the provisions of the abovementioned article, every employee has an unconditional individual right to terminate an employment contract on his/her own initiative. An employee is not obliged to give any explanation or other reasons for such a decision.<sup>8</sup> Under laws and other regulatory acts, an employee is only required to give a written notice to an employer until a defined term. In our opinion, such a flexible termination of a fixed-term employment contract in some cases gives background for the violation of employer's interests. For example, if an employer is working on a particular project with anticipated time limit and number of employees for its realization, the unconditional termination of employment contract before the completion of the project can cause big damages for the employer, as it would be quite difficult to quickly find a new employee in 14 days and get him

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7 *Lietuvos Respublikos darbo kodekso komentaras, supra* note 3, p. 124.

8 *Ibid.*, p. 124, 125, 127.

acquainted with the situation in full. In such a case it is difficult to determine the person responsible for the ultimate results of the project.

It is suggested that an employee should be given an opportunity to terminate an open-ended employment contract upon 14 days prior notice of resignation. But fixed-term employment contracts, in our opinion, should be terminated only due to substantial reasons or the parties should maintain the right to reach a mutual agreement regarding the terms. Such a regulation should not be considered as a violation of the constitutional freedom of the choice of employment because the principle of legitimate expectations must be protected as well; what is more, it should be considered that parties will use their rights in good faith and will not abuse them.

## 2.2. Determination of the True Will of the Parties

V. Tiažkijus<sup>9</sup> indicates that the most frequent obscurities in the usage of the abovementioned provisions arise for two reasons concerning: 1) voluntary nature of an employee's notice; 2) period of notice.

Court practice has shown examples where employers force employees to sign applications for the termination of employment relationship by abusing their power or using other impermissible measures. This allows employers to dismiss an undesirable employee without having expenses provided by law, or, in other words, to dismiss an employee without paying a severance pay, without applying terms of notice and other guarantees.

The grounds for the termination of an employment contract upon the notice of an employee guarantee a person's right to freely choose an employment; therefore, if an employee terminates an employment contract on this ground, such a true will must be reflected in the application. It must be written voluntarily, with no psychological pressure from the employer or influence of other impermissible measures.

According to court practice, the termination of an employment contract upon the notice of an employee is possible only if a wilful voluntary resignation notice from an employee is received. The Supreme Court of Lithuania in the case of *E.A.Š. v. PC "Šou lyga"* ('*Show league*')<sup>10</sup> made an explanation that a dismissal from work can be recognised illegal only if it is proved that an employer made impermissible influence to an employee which resulted in the employee's decision to resign from work.<sup>11</sup>

It should be noted that the Labour Code should have had a rule preventing from breaches of law made by employers by forbidding violence, threatening or other illegal means used in order to make an employee terminate an employment contract.

9 Tiažkijus, V., *supra* note 5, p. 416.

10 Lietuvos Aukščiausiojo Teismo Civilinių bylų skyriaus teisėjų kolegijos nutartis, priimta 2005 m. spalio 17 d. civilinėje byloje *E.A.Š. v. VŠĮ „Šou lyga“*, bylos Nr. 3K-3-493/2005 [Case of the Supreme Court of Lithuania No. 3K-3-493/2005].

11 In this particular case the employer made a notice to employees that there is a possibility that a contract of the rent of premises might not be renewed and that may lead to dismissal from work. The court decided that such an information should not be qualified as employer's influence on an employee to give a written notice about resignation from work.

If an employee wishes to terminate an employment contract on his/her own initiative, he/she must follow the process provided for in the Labour Code for this particular case. The main document, in this case, is a written notice of an employee where he/she expresses the will to terminate an employment contract and indicates a preferable date of dismissal from work. A written form of notice of an employee about the termination of an employment contract is imperatively established in the Labour Code; therefore, the employee's will cannot be expressed orally; any other conclusive actions are not provided for as well. In practice employees often inaccurately formulate applications to terminate an employment contract upon their notice, for example, 'to dismiss voluntarily', 'on my own will', etc., but it is not of legal significance. The most important thing is the employee's expressed intention to terminate employment. Again the Labour Code does not oblige an employee to indicate the reason for the termination of a fixed-term or an open-ended employment contract.

An employee must give a written notice to an employer. Such a notice should be given to an employer's authorized person with his signature so that in case of a dispute it would be easy to prove the date of notice. In cases when an employer does not want to dismiss an employee from work or wants to keep an employer for as long as possible and refuses to accept the employee's notice, an employee may give notice by sending it by registered mail, with the help of other persons who can later testify, by drawing up a report on the employer's refusal, also through a notary or a bailiff. Considering modern technologies, sending a notice by mail may be replaced by sending a notice by fax and/or e-mail, especially if the usage of such technologies is usual in an employer's practice.

Article 127(1) of the Labour Code establishes a 14-day period of notice. It is a general term for the termination of an employment contract upon the notice of an employee. It is permitted by law for an employer and representatives of employees to agree on longer terms of notice in a collective agreement, but this term may not be longer than one month. Terms of notice shorter than 14 days are set if an employment contract is terminated upon the notice of an employee for reasons unrelated to him/her; if a contract is terminated during a trial period; if a trial period is set by an employee or if other kinds of employment contracts are terminated.

### 2.3. Other Practice

Comparing Lithuanian and other countries' laws, it can be noticed that in Lithuania the period of notice of 14 days is one of the shortest. For example, Article 51(1) of the Labour Code of the Czech Republic<sup>12</sup> sets a 30-day period of notice; Article 326(2) of the Labour Code of Bulgaria<sup>13</sup> sets a 30-day period of notice for an open-ended employment contract. What is more, the parties are allowed to agree on a shorter period of

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12 Labour Code of the Czech Republic [interactive]. [accessed 29-01-2010]. <[http://www.mpsv.cz/files/clanky/3221/labour\\_code.pdf](http://www.mpsv.cz/files/clanky/3221/labour_code.pdf)>.

13 Labour Code of Bulgaria [interactive]. [accessed 29-01-2010]. <[www.mlsp.government.bg/en/docs/labour/index.htm](http://www.mlsp.government.bg/en/docs/labour/index.htm)>.

notice (but in any case the period should not exceed three months), while in the case of the termination of a fixed-term contract a three-month period is set (but it shall not be longer than the time left till the expiry of an employment contract).

Longer terms are set to protect employers and give them an opportunity to have more time to find another employee without stopping production and other processes. In our opinion, a two-week period is fairly short. When an employee presents a request to terminate an employment contract, the employer needs not only to find a new employee, go through all employment formalities, but also, in most cases, organize certain training courses for the new employee, introduce to the new job and usually his/her adaptation in a new working place takes some time. It is also important to stress that sometimes an employee is liable for a company's assets and certain documents the transfer of which might take longer than a couple of weeks. In our opinion, much depends on an employee's position and the duration of his service when he/she leaves a job. For example, it is always easier to change employees that do technical jobs than employees holding managing positions.

We propose to set different terms of the termination of an employment contract depending on the duration of an employee's work for a particular company. An example could be a provision of the Employment Contracts Act of Finland<sup>14</sup> which regulates the terms of notice of the termination of an employment contract by an employee. This provision sets the following terms: 14-day period if an employee works for a company for less than five years; one month period if an employee works for a company for more than five years. For example, Article 79(4) of the Romanian Labour Code<sup>15</sup> indicates that a period of notice is set by an employment contract or a collective agreement, but it may not be longer than 15 days for subordinates and 30 days for managers.

Article 107(2) of the Lithuanian Labour Code stipulates that the employee shall be entitled to terminate the employment contract during the trial period by giving the employer a written notice thereof three days in advance. It should be noted that this period of notice is applied only when a trial period is set to see if an employee is satisfied with a new position. If a trial period is set to see if an employee is qualified enough for a certain position, an employee shall give a notice to an employer 14 days before the termination of an employment contract, as set by law.

According to the Resolution of the Government of the Republic of Lithuania 'concerning the validation of the peculiarities of different employment contracts', a temporary employment contract may be terminated before the end of its term if an employee gives an employer a notice five days in advance.<sup>16</sup> A similar provision can be found in the Resolution 'concerning seasonal work'<sup>17</sup>. The abovementioned resolution inclu-

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14 Employment Contracts Act of Finland [interactive]. [accessed 29-01-2010]. <[www.finlex.fi/en/laki/kaanokset/2001/en20010055.pdf](http://www.finlex.fi/en/laki/kaanokset/2001/en20010055.pdf)>.

15 Labour Code of Romania [interactive]. [accessed 29-01-2010]. <[www.cdep.ro/legislatie/eng/vol58eng.pdf](http://www.cdep.ro/legislatie/eng/vol58eng.pdf)>.

16 Resolution No. 1043 of the Government of the Republic of Lithuania of 19 August 2003 on Approval of Peculiarities of Employment Contracts. *Official Gazette*. 2003, No. 81(1)-3690.

17 Resolution No. 154 of the Government of the Republic of Lithuania of 7 March 1994 on Seasonal Work. *Official Gazette*. 1994, No. 19-313.

des ‘contract provisions of seasonal work’, according to which a seasonal employment contract can be terminated before the expiry of the term of its validity upon the notice of an employee, if an employee gives the employer a notice thereof 5 calendar days in advance (Article 6.1).

#### 2.4. Lithuanian Court Practice

In the Commentary of Labour Code I. Nekrošius notices that an employee has a right to notice an employer about the termination of an employment contract any time, i.e. while working, being ill, on vacation, etc. A question often arises in practice: what should be the content of such a notice?

The Supreme Court of Lithuania in its judgement stated that an analysis of the content of the norms of Article 127 of the Labour Code guide to a conclusion that an employee who seeks to terminate an open-ended employment contract should present an employer with a written notice and indicate both, the day of drawing up the notice and the day he/she prefers to terminate the employment contract.<sup>18</sup> Indication of the date is a necessary requirement to terminate employment because Article 127(4) of the Labour Code stipulates that an employee is entitled to withdraw his request to terminate the employment contract not later than within three days of the submission of the request.<sup>19</sup> Indication of the date in the request to terminate an employment contract also has significance for the term of dismissal, during which the employer must execute the termination of the employment contract and settle accounts with the employee. In the case of *V.M. v. Pravieniškių gydymo ir pataisų namai (Pravieniškės medical institution and penitentiary)*<sup>20</sup> the Supreme Court stated that it is an employer’s duty to check a properly formalised employee’s application to terminate the employment contract with indications of the day of drawing up the application and the day the employee prefers to terminate the employment contract.

In one of its judgements the Supreme Court has stated that if there is no specified date on an employee’s application to terminate an employment contract, the employee shall be entitled to terminate the employment contract only after 14 days of the submission of the notice and the employer is allowed to execute the termination of the employment only after the indicated term.<sup>21</sup>

The Supreme Court of Lithuania has established that, under Article 127 of the Labour Code, the moment of writing a notice has no significance. A significant element is the moment when an employer is noticed about an employee’s decision to terminate an

18 Lietuvos Aukščiausiojo Teismo Civilinių bylų skyriaus teisėjų kolegijos nutartis byloje Nr. 3K-3-358/2007 [Case of the Supreme Court of Lithuania No. 3K-3-358/2007].

19 Dambrauskienė, G.; Macijauskienė, R.; Mačernytė-Panomariovienė, I. *Darbo sutartis: sudarymas, vykdymas, nutraukimas* [Employment Contract: Conclusion, Performance, Termination]. Vilnius: Žaltvykslė, 2007, p. 197.

20 Lietuvos Aukščiausiojo Teismo Civilinių bylų skyriaus teisėjų kolegijos nutartis byloje Nr. 3K-3-613/2006 [Case of the Supreme Court of Lithuania No. 3K-3-613/2006].

21 Lietuvos Aukščiausiojo Teismo Civilinių bylų skyriaus teisėjų kolegijos nutartis byloje Nr. 3K-3-567/2000 [Case of the Supreme Court of Lithuania No. 3K-3-567/2000].

employment contract. Namely the day of giving a notice to the employer, i.e. the day of handing in an application to the employer, is the beginning of the minimum term as well as the beginning of a three-day period during which an employee is entitled to withdraw his decision to terminate an employment contract. In case of a dispute, the fact that there is no date of writing an application and a preferable date of the termination of an employment contract indicated creates an obligation for an employer to prove the legitimacy of the termination of employment, in this case—that an employee expressed his free will to terminate the employment contract by handing in an application with a preferable date of the termination indicated (Article 178 of the Code of Civil Procedure of the Republic of Lithuania).<sup>22</sup>

On the other hand, employees often do not follow the requirements established by law and try to terminate an employment contract earlier than in a 14-day period. The Supreme Court of Lithuania has given a clarification in the case of *B.J. v. JSC 'Zepter International'*<sup>23</sup> that the term of notice is established in favour of an employer. Therefore, an employer has the right, but not the obligation, to withdraw a privilege given to him by this term.

If an employee leaves work without a proper notice to the employer, an employer may impose a disciplinary sanction for absence and dismiss an employee from work for the breach of labour discipline. But employers often face problems in this case: jobs are left unfinished, documents and material assets not transferred, working processes stopped and the employer suffers material loss. An employee who does not observe the rules and terms set by law in such a case shall compensate the damages made for the employer.

An exceptional feature of the termination of an employment contract upon the employee's request (Article 127(4) of the Labour Code) is that an employee has an opportunity to change his/her mind: an employee is entitled to withdraw his decision to terminate an employment contract not later than during three days from the day of filing the application, while later it is possible only with the consent of the employer. It should be noted that an employee may use this right only until the formalisation and accomplishment of the termination process. Therefore, if an employee gives an employer a request to terminate an employment contract on the same day and the employer agrees and processes the termination, there is no possibility to withdraw such a request even during the three-day period. The Labour Code does not specify the form of withdrawing a request to terminate an employment contract, but according to I. Nekrošius, since a request to terminate an employment contract must be in a written form, withdrawal must be in a written form as well.<sup>24</sup>

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22 Lietuvos Aukščiausiojo Teismo Civilinių bylų skyriaus teisėjų kolegijos nutartis byloje Nr. 3K-3-218/2008 [Case of the Supreme Court of Lithuania No. 3K-3-218/2008].

23 Lietuvos Aukščiausiojo Teismo Civilinių bylų skyriaus teisėjų kolegijos nutartis byloje Nr. 3K-3-646/2004 [Case of the Supreme Court of Lithuania No. 3K-3-646/2004].

24 *Lietuvos Respublikos darbo kodekso komentaras, supra* note 3, p. 124, 125, 127.

In the case of *A.V. v. JSC 'Autosabina'*<sup>25</sup> the Supreme Court of Lithuania stated that the key issue is that the application for dismissal from work was withdrawn before the formal termination of the employment contract. The Court said that a rule in the Article 127(4) of the Labour Code gives an employee the right to contemplate his decision and change it. This rule is of a peremptory nature, which gives an employee the right to withdraw his application not later than in a three-day period (an employer has no right to change this term). However, if an employee indicates a particular day of dismissal from work in his application and the period between this day and the day he hands in the application to the employer is not longer than three days, an employer has the right to satisfy the employee's application from the day indicated in the employee's application. If an employer uses this right and satisfies an employee's application, an employee no longer has a right to withdraw his application.

Other countries' labour laws include various withdrawal rules. For example, Article 100(3) of the Labour Code of Latvia<sup>26</sup> allows an employee to withdraw a request to terminate an employment contract only with the consent of the employer, unless otherwise established in the employment contract or a collective agreement. The Labour Code of Slovakia<sup>27</sup> sets a much stricter regulation for withdrawal: an application can only be withdrawn with a prior consent of another party. Article 80(4) of the Labour Code of the Russian Federation<sup>28</sup> provides a right for an employee to withdraw his request during the whole period of notice except the cases when another employee is already employed or under other laws is invited to this position in a written form.

It is often the case that employees request to terminate employment contracts after a conflict with an employer, but later regret their decision. In such a case a provision in the Labour Code, which allows to withdraw a request three days in advance, gives a possibility for an employee to reconsider his/her decision and change his/her mind.

Upon the expiry of the period of notice an employee shall be entitled to terminate his employment, whereas the employer must formalise the termination of the employment contract and settle accounts with the employee. The Lithuanian Labour Code does not provide for any possibility for an employer to keep an employee at work after the expiry of an employment contract. In other words, it is impossible to delay the execution of the termination of an employment contract and settling accounts with the employee. Even if an employee has made damage for an employer, the latter shall apply to the court, but not delay the termination of an employment contract.<sup>29</sup>

There exist situations when even after the formal termination of an employment contract the employee continues working. If by request of administration an employee

25 Lietuvos Aukščiausiojo Teismo Civilinių bylų skyriaus teisėjų kolegijos nutartis, priimta 2004 m. lapkričio 3 d. civilinėje byloje *A.V. v. UAB „Autosabina“*, bylos Nr. 3K-3-586/2004 [Case of the Supreme Court of Lithuania No. 3K-3-586/2004].

26 Labour Law of Latvia [interactive]. [accessed 29-01-2010]. <[www.ttc.lv/New/lv/tulkojumi/E0223.doc](http://www.ttc.lv/New/lv/tulkojumi/E0223.doc)>.

27 Labour Code of the Slovak Republic [interactive]. [accessed 29-01-2010]. <[www.ilo.org/dyn/natlex/natlex\\_browse.details?p\\_lang=en&p\\_country=SVK&p\\_classification=01.02&p\\_origin=SUBJECT](http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=SVK&p_classification=01.02&p_origin=SUBJECT)>.

28 Трудовой кодекс Российской Федерации [Labour Code of the Russian Federation] [interactive]. [accessed 29-01-2010]. <[www.rg.ru/official/doc/codexes/trud/13.shtm](http://www.rg.ru/official/doc/codexes/trud/13.shtm)>.

29 Macijauskienė, R., *supra* note 6, p. 75.

agrees to continue working after the expiry of the term of notice, it should mean that an employment contract has been prolonged. In this case an employer has the right to terminate an employment contract upon the abovementioned notice of an employee only by a new request of an employee.<sup>30</sup> The Labour Code of the Russian Federation includes a special provision establishing that if an employment agreement was not terminated upon the expiry of the withdrawal notice period and if an employee does not insist on withdrawal, the employment agreement (relationship) is resumed. A similar provision exists in the Employment Contracts Act of Finland: if an employment contract was not terminated upon the expiry of the withdrawal notice period and if an employee does not insist on withdrawal, employment agreement is resumed for an open-ended period. The Labour Code of Lithuania does not include such provisions.

Article 95(5) of the Lithuanian Labour Code stipulates that certain conditions can be agreed upon in an employment contract: if an employment contract is terminated with the fault on the part of an employee or upon the notice of an employee without a substantial reason, an employee shall compensate the expenses that employer had in the last year for the employee's training or education. A collective agreement may provide other terms and conditions of compensation for educational expenses. Compensation for expenses must be defined and agreed upon in the employment contract. Therefore, these conditions may be negotiated when concluding an employment contract. To avoid further disputes over the compensation for educational expenses it is advisable to define what expenses will be considered as educational.

One more aspect of the termination of an employment contract upon the notice of an employee needs to be discussed. Article 131 of the Labour Code establishes that it shall be prohibited to give notice of the termination of an employment contract and to dismiss from work an employee during the period of temporary disability as well as during his/her leave, except for the cases when an employment contract must be terminated without notice (Article 136(1)). In the case of *J.K. v. JSC 'Alvora'*<sup>31</sup> the Supreme Court of Lithuania stated that Article 131(1) of the Labour Code should be referred to when an employment contract is terminated on the employer's initiative and should not be referred to when an employment contract expires on other grounds, such as in this particular case, of an employment contract terminated upon the notice of an employee. In other words, restrictions provided for in Article 131 of the Labour Code shall not apply for the termination of an employment contract upon the notice of an employee.

The analysis of the legal regulation and practical application of the termination of an employment contract upon the notice of an employee revealed many theoretical and practical problems in legal regulation. The analysis of court practice showed that a part of the problems of practical application are caused by the limitations of legal regulation. Therefore, considering theoretical and practical problems of the interpretation of the provisions of the Labour Code, a conclusion can be made that the institution of the ter-

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30 *Lietuvos Respublikos darbo kodekso komentaras, supra* note 3, p. 125.

31 Lietuvos Aukščiausiojo Teismo Civilinių bylų skyriaus teisėjų kolegijos nutartis, priimta 2004 m. birželio 23 d. civilinėje byloje *J.K. v. UAB „Alvora“*, bylos Nr. 3K-3-391/2004 [Case of the Supreme Court of Lithuania No. 3K-3-391/2004].

mination of an employment contract upon the notice of an employee is a relevant sphere for scientific research and practical interpretation of the application of provisions.

### 3. Full Settlement with an Employee

Under Article 141 of the Labour Code, an employer must make a full settlement of accounts with an employee being dismissed from work on the day of his/her dismissal, unless a different procedure for settling accounts is provided for by laws or an agreement between the employer and the employee. An employee who is dismissed from work upon his/her notice (Article 127(1) of the Labour Code), is not subject to severance pay (Article 140(2) of the Labour Code). An employee shall be paid an allowance for the unused annual leave and fully paid for the period of employment.

It is important to notice that when an employer receives an employee's application for dismissal from work, he/she still has an opportunity to dismiss an employer on other grounds for the expiry of an employment contract established in the Labour Code, for example, for the breach of labour discipline.

### Conclusions

The analysis of the legal regulation and practical application of the termination of an employment contract upon the notice of an employee leads to the following conclusions:

1. The determined true will of the employee is very important for the termination of an employment contract upon his/her notice. In the court practice there exist a lot of cases when employees dispute the validity of dismissal from work upon his/her notice (will) that was obtained by employer's improper actions and impact on the employee.

2. Periods of notice set in the Labour Code of the Republic of Lithuania for the termination of an employment contract upon the notice of an employee are relatively short in comparison with the periods of notice established in other European countries.

3. In the court practice the right to withdraw an application under Article 127(4) is considered to be an opportunity for the employee to resist the employer's influence on the formation of his/her true will to terminate employment.

4. With reference to the European practice, the authors suggest changes in the Lithuanian law providing that a fixed-term employment contract could be terminated only due to valid reasons or giving a right to the parties to make an agreement regarding the term of notice.

5. Restrictions on the Termination of an Employment Contract, specified in Article 131 of the Labour Code, should not be applied if an employment contract is terminated upon the notice of an employee.

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## DARBO SUTARTIES NUTRAUKIMO DARBUOTOJO PAREIŠKIMU PROBLEMOS LIETUVOJE

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**Santrauka.** Šio tyrimo tikslas – išanalizuoti ir nustatyti darbo sutarties nutraukimo darbuotojo pareiškimu probleminius teorijos bei praktinio taikymo aspektus, galimas Lietuvos Respublikos darbo kodeksas (toliau – DK) normų, reglamentuojančių darbo sutarties nutraukimą darbuotojo pareiškimu, tobulinimo perspektyvas, suformuluoti ir pateikti rekomendacijas dėl DK normų pakeitimo.

Pasirinkta tema, susijusi su darbo sutarties nutraukimu darbuotojo pareiškimu, aktuali tuo, jog šis klausimas nėra plačiai išanalizuotas ir išnagrinėtas teisinėje literatūroje, o darbo sutarties nutraukimo darbuotojo pareiškimu pagrindai yra vieni iš dažniausiai praktikoje pasitaikančių darbo sutarties nutraukimo pagrindų. Kaip rodo teismų praktika, ginčų dėl darbo sutarčių nutraukimo darbuotojo pareiškimu skaičius teismuose yra pakankamai didelis, dėl to galima teigti, kad šie iš pirmo žvilgsnio labai aiškiai suformuluoti darbo sutarties pasibaigimo pagrindai kelia nemažai praktinio taikymo problemų.

Atlikus teisinio reglamentavimo ir praktinio taikymo analizę padarytos išvados, jog nutraukiant darbo sutartį darbuotojo pareiškimu labai svarbu nustatyti, ar yra tikroji darbuotojo valia nutraukti darbo santykius, teikiami pasiūlymai ilginti įspėjimo apie būsimą darbo sutarties nutraukimą darbuotojo pareiškimu terminus, nustatyti apribojimus darbuotojo iniciatyba nutraukti terminuotą sutartį.

**Reikšminiai žodžiai:** darbo sutartis, darbo sutarties nutraukimas darbuotojo pareiškimu.

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