

To the Scientific Jury  
of New Bulgarian University  
Sofia

**REVIEW**

**by Assoc.Prof. Dr. Rayna Moskova Koycheva,**  
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appointed by Order 3-PK-17/05.10.2022 of the Rector of the New Bulgarian University as member of the scientific jury for awarding the scientific degree of  
Doctor of Science  
to Ivailo Ivanov Staikov  
in scientific field 3.6 ‘Law’,  
scientific specialty 05.05.10 ‘Labour Law and Social Security’  
on the basis of a dissertation on the topic  
‘Unpaid Leave under Art. 160, Para. 1 of the Labour Code’

Dear colleagues,

I would like to bring to your attention my review of the draft dissertation of Assoc.Prof. Dr. Ivaylo Staykov on the topic ‘Unpaid Leave under Art. 160, Para. 1 of the Labour Code’, which is presented for discussion related to awarding the scientific degree of Doctor of Science.

**I. Topicality and significance of the scientific issues examined in the dissertation**

I am of the opinion that the scientific issues discussed in the dissertation are significant and topical, which is determined by several facts.

First, unpaid leave is an important labour law institute of great practical applicability that particularly affects the rights, interests and dignity of the individual.

Second, our scientific literature currently lacks a thorough and comprehensive monographic study of unpaid leave.

Third, there is an obvious need to systematize the theoretical knowledge as well as to rationalize the judicial and administrative practice related to the use of unpaid leave under Art. 160, para. 1 of the Labour Code (LC), which is what Assoc.Prof. Ivaylo Staykov has done.

The dissertation ‘Unpaid Leave under Art. 160, Para. 1 LC’ has a volume of 338 pages, which are equivalent to 426 standard typewritten pages. As for its structure, it consists of: an introduction, four chapters, a conclusion and a bibliography.

## **II. Evaluation of the scientific contributions of the dissertation**

The dissertation represents a *complex analysis* of the unpaid leave under Art. 160, para. 1 LC as a leave-legal possibility. I would like to highlight a merit of the work, namely, its *overall view of labour law matters, the complex approach and the consideration of the institute of unpaid leave under Art. 160, para. 1 LC in its relation to other labour law and social security institutes* (length of employment, contributory service, changes in the employment relationship, compensation for unlawful temporary suspension from work, etc.), as well as the distinction of this type of leave from paid leave and from some other types of unpaid leave (e.g. targeted unpaid leave, which constitutes a statutory subjective right of the employee).

The dissertation is characterized by *clear and precise language and good juridical style*.

I will point out some of the specific scientific contributions of the dissertation:

1/ The in-depth scientific analysis of the institute of unpaid leave leads the author to the conclusion that, although at the legislative level this type of leave is only regulated as a legal option, from the moment the employer agrees to its use, a subjective right to the use of unpaid leave arises for the employee. This subjective

right is not laid down in law as such, but it arises from the contract between the employee and the employer regarding the use of the unpaid leave. In essence, this is a contract for amendment of the employment relationship, which temporarily suspends the effect of the employment relationship although the said relationship continues to exist. This consideration of the mechanism of conversion of the unpaid leave under Art. 160, para. 1 LC from a leave-legal possibility regulated in the legislation into a leave-subjective right, this conversion taking place at the time the employer consents to the use of the leave, is of a definitely contributory nature. The consideration of the agreement between the employee and the employer regarding the use of unpaid leave as a contract for amendment of the employment relationship has a contributory character as well.

2/ Next, a scientific contribution is also the author's well-grounded thesis on the admissibility of the possibility of establishing a subjective right to unpaid leave in a contractual way, namely, in the Collective Bargaining Agreement or in the employment contract itself. The dissertation also addresses the question of recognition of such contractually established unpaid leave as length of employment and contributory service as well.

3/ The classification of unpaid leave according to different criteria also constitutes a scientific contribution. The first criterion is the legal framework, which is a direct consequence of the socio-legal purpose of unpaid leave. According to this criterion, unpaid leave is divided into three types: unpaid leave-legal possibility, unpaid leave-subjective right of the employee and unpaid leave-subjective right of the employer. The second criterion is the period for which the unpaid leave is recognised as length of employment and contributory service. The third criterion depends on whether the unpaid leave is laid down in law or in a contract.

4/ Scientific contribution is also contained in the proposals given by the author for improvement of the legislation, most of these proposals being well motivated, justified and expedient. I will mention only two of them:

a/ the proposal that *de lege ferenda* the provision of Art. 118, para. 1 of the Labour Code: ‘The employer or employee may not unilaterally change the content of the employment relationship, except in the cases provided for and in accordance with the procedure established by law’ should be edited, adding ‘in a collective bargaining agreement or in the employment contract’ at the end;

b/ the proposal for *de lege ferenda* changes in the provision of Art. 9, para. 2 of the Social Security Code, which should provide that unpaid leave over 30 working days will be recognised as contributory service for the time for which it is recognised as length of employment.

5/ I would like to note another contribution, namely the detailed analysis of the relevant judicial and administrative practice, which makes it possible to disclose the problems and weaknesses both in the legal framework itself and in its interpretation and implementation.

6/ Another contribution of the author is the understanding that the provision of Art. 214 of the Labour Code (LC) should not be interpreted narrowly, i.e. solely in connection with the application of the coercive disciplinary measure under Art. 199 LC. The said provision should be interpreted more broadly, including all other hypotheses of unlawful temporary suspension from work of an employee by order of the employer or the immediate manager that are conceivable, yet not explicitly regulated in law. One of these possible hypotheses is the unacceptable unilateral granting of unpaid leave by the employer.

7/ A theoretical contribution of the author is also the justification of the thesis that, as far as civil servants are concerned, there exists a complex legal relationship that includes the relatively separate service relationship and employment relationship.

That was a non-exhaustive list of the author’s scientific contributions, but it seems sufficient to convince us that the dissertation of Assoc.Prof. Ivaylo Staykov ‘Unpaid Leave under Art. 160, Para. 1 LC’ is an in-depth scientific study.

### **III. Critical remarks**

Some critical remarks can be made to the dissertation. For example, I disagree with the proposal of Assoc.Prof. Staykov that the provision of Art. 327, paragraph 1, item 11 LC should be removed as unnecessary. It is in an interpretative way that the author deduces the legal obligation of the employer not to unilaterally grant unpaid leave to the employee without his/her consent. The author states that this obligation forms part of the statutory content of each employment relationship and that it is included in the corpus of facts of the grounds for unilateral termination of the employment contract by the employee without notice under Art. 327, para. 1, item 3, second hypothesis LC: ‘the employer fails to fulfil other obligations laid down in a regulatory act’. In view thereof, the author proposes that the provision of Art. 327, para. 1, item 11 LC should be removed as unnecessary. Although, in general, I agree with the arguments brought forward by Assoc.Prof. Ivaylo Staykov, I think it is better not to remove the provision of Art. 327, para. 1, item 11 of the Labour Code, as the latter lacks an explicitly formulated obligation of the employer not to unilaterally grant unpaid leave to the employee without his/her consent, this obligation being deduced through interpretation. But will all employers interpret the law to that effect? Moreover, as the author himself points out, the judicial practice shows that this is a frequent violation committed by employers. That is why I think it is better to keep the provision of Art. 327, para. 1, item 11 LC in view of its preventive function, namely to deter employers from committing such a violation of labour law.

### **IV. Conclusion, evaluation of the dissertation and proposal to the members of the scientific jury of New Bulgarian University**

On the grounds of the above:

1. *In conclusion*, I am of the opinion that the dissertation ‘Unpaid Leave under Art. 160, Para. 1 LC’ meets the requirements of Art. 12, para. 4 and 5 of the Law on Academic Staff Development in the Republic of Bulgaria (LASDRB) for

awarding the scientific degree of ‘Doctor of Science’, namely, the dissertation contains theoretical generalizations and solutions to major scientific and scientifically applicable issues that correspond to modern achievements and represent a significant and original contribution to science. In addition, Assoc.Prof. Dr. Ivaylo Staykov meets the requirements of Art. 12, para. 1 of the Law on LASDRB, namely, he holds the educational and scientific degree of ‘Doctor’ and meets the minimum national requirements under Art. 2b, para. 2 and 3 LASDRB.

2. I state *my positive evaluation* of the dissertation.

3. In relation thereto, ***I propose to the scientific jury to make a decision to award to Ivaylo Ivanov Staykov the scientific degree of ‘Doctor of Science’*** in Scientific domain 3. ‘Social, Economic and Legal Sciences’, Professional field 3.6. ‘Law’, Scientific specialty ‘Labour Law and Social Security’.

14 Dec. 2022

Respectfully:

/Assoc.Prof. Dr. Rayna Koycheva/