

REVIEW

by Prof. Georgi Stefanov Ivanov, J.S.D.
Veliko Tarnovo University 'St.St. Cyril and Methodius'

Scientific domain 3. Social, Economic and Legal Sciences
Professional field '3.6. Law.' Specialty 'Civil and Family Law'

Grounds for presentation: membership in a scientific jury on the defence of a dissertation in accordance with Order No 3-PK-17 of 05.10.2022 of the Rector of New Bulgarian University (NBU) on the basis of Decision of the Academic Council No. 1 dated 27.09.2022

Re: Dissertation for the award of a scientific degree of Doctor of Science

Dissertation topic: 'Unpaid Leave under Art. 160, Para. 1 of the Labour Code'

Author of the dissertation: Ivaylo Ivanov Staykov, Doctor of Law, Associate Professor at NBU

Dear members of the scientific jury,

The review presented by me is divided into five parts: professional qualities of the candidate; general characteristics of the dissertation; scientific, scientifically applied and applied contributions; critical remarks and recommendations; conclusion.

1. Professional qualities of the candidate

Ivaylo Staykov graduated from the Faculty of Law at Sofia University 'St. Kliment Ohridski' in the year 1994. In 2003 he acquired the educational degree of 'Master in Finance' at Veliko Tarnovo University 'St.St. Cyril and Methodius'. He earned the scientific degree of Doctor of Law in 2006.

The professional path of Ivaylo Staykov is rich and diverse. It is dominated by academic activity. From 2002 to 2011 he worked consecutively as an assistant professor, senior assistant professor and chief assistant professor in Labour Law and Social Security at NBU. Since November 2011 he has been an associate professor in the same specialty at the same university. He has also taught at other universities in the country.

At the same time, Ivaylo Staykov has gained extensive practical experience as a legal adviser at Financial House 'Business Week', attorney-at-law, liquidator of Sofia Ins AD Insurance Company, consultant of various institutions and

organizations, arbitrator in a conciliation commission at the Consumer Protection Commission.

The research activity of Ivaylo Staykov is extremely rich and is reflected in over 200 scientific and practical publications. Among them are three monographs, dozens of studies and articles. In addition to being a specialist in the field of labour and social security law, Assoc.Prof. Staykov has also appeared in the past decades as a prolific author of numerous high-quality articles and studies focused on various institutes of commercial and civil law. Indicative is the fact that over 90 of Ivaylo Staykov's scientific publications have been cited repeatedly by over 65 authors. He has participated with reports in over 100 scientific forums in Bulgaria and abroad.

Ivaylo Staykov is a member of the Expert Committee of the Institute of Economic Development and Social Researches (İKSAD), Republic of Turkey, and a member of the scientific committees and councils of international scientific conferences organized by the Institute; he is a member of the editorial board of the International Journal of Law and Society (IJLS), ISSN (online) 2640-1908, publisher: Science Publishing Group; member of the International Forum of Lecturers at the UNESCO Bioethics Commission; two-term member of the Research Ethics Committee at the Medical University, Sofia (RECMUS) (2008-2016); Chairman of the Board of Trustees of the Student Community Centre 'Grigory Tsamblak' – Sofia (1999-2010) and member of the Management Board of the Bulgarian National Association of Consumers (2001-2007).

All the facts about the teaching, research and practical and applied activities of Ivaylo Staykov define him as a profound and multifaceted jurist.

2. General characteristics of the dissertation

The dissertation 'Unpaid Leave under Art. 160, Para. 1 of the Labour Code' does not repeat the topic of the dissertation presented for acquiring the educational degree of 'Doctor' and its content differs from the content of the habilitation work for occupying the academic position of Associate Professor by the candidate. This complies with the requirements of Art. 12 of the Law on Academic Staff Development in the Republic of Bulgaria (LASDRB) and Arts. 35-37 of the LASDRB Implementation Regulations.

There is no evidence of plagiarism within the meaning of § 1, item 7 of the Additional Provisions of the LASDRB in the scientific paper submitted for review by Assoc.Prof. Ivaylo Staykov.

The dissertation is 306 pages long and includes introductory notes, four chapters, a conclusion and a list of the literature used, the chapters being structured in paragraphs. The work has 326 footnotes. The bibliography contains over 190 titles in Bulgarian and Russian, 16 of them being self-citations.

The dissertation is the first comprehensive scientific study of unpaid leave under Art. 160, para. 1 LC in our labour law doctrine. Consideration is given to: the types of leave depending on whether the leave is a subjective right or a legal possibility; the legal nature of unpaid leave under Art. 160, para. 1 of the Labour Code; its distinction from other types of unpaid leave; and a comment is made on the judicial practice of application of this provision.

The work contains a comprehensive and in-depth analysis of the opinions in our labour law doctrine that relate to the issues under consideration, and the author argues a number of his own concepts and puts forward additional arguments in support of or against opinions that he shares or does not accept.

Incompleteness and imperfections in the labour and social security legislation are pointed out and proposals *de lege ferenda* are made, which deserves being supported.

The judicial practice in labour and social security disputes has been critically analysed and a number of conclusions have been drawn which are also important for law enforcement.

In certain aspects, the work is complex in nature, as it concerns some issues that are beyond the sphere of social security law, namely, issues of the general theory of law, civil law, constitutional and administrative law.

3. Scientific and applied contributions

The main scientific and scientifically applied contribution of the dissertation is the clarification of the legal nature, the socio-legal purpose and the procedure for using the unpaid leave under Art. 160, para. 1 of the Labour Code in comparison with the other two types of unpaid leave – the unpaid leave under Art. 160, para. 2 LC, which is a subjective right of the employee, and the unpaid forced leave, which is a subjective right of the employer, as it is granted without the consent of the employee. This approach provides the opportunity of making the most accurate characteristic of unpaid leave under Art. 160, para. 1 of the Labour Code as a legal opportunity for the employee, which is converted into a subjective labour right. Consideration is also given to the division of unpaid leave on the basis of another classification criterion, namely, the recognition of the period of leave as length of employment and (or) contributory service, according to which there are three types of leave. According to a third criterion, the types of unpaid leave are statutory and contractual leave.

The author shares the opinion that the civil servant's legal relationship is complex in nature, as it includes a service relationship and an individual employment relationship, which are different in their subject matter. It is on this basis that a conclusion worthy of support has been drawn, namely that the unpaid leave of a civil servant under Art. 64, para. 1 of the Civil Servant Law is

not an independent type of unpaid leave, but, as far as its nature, socio-legal purpose and procedure of use are concerned, it is identical to the unpaid leave of the employee under Art. 160, para. 1 LC.

The author adduces interesting arguments against the labour law doctrine definition of the leave under Art. 160, para. 1 of the Labour Code as 'unpaid annual leave', assuming that the statutory change in the title of the provision is an expression of a change in the legislator's views on certain aspects of the legal framework of this unpaid leave.

The statement regarding the request of the employee for use of unpaid leave under Art. 160, para. 1 LC is also of contributory importance, however, it is inaccurately defined as a unilateral statement (unilateral transaction) under Art. 44 of the Law on Obligations and Contracts, as it is an element of a corpus of facts and does not generate, amend or terminate rights or obligations on its own. The contributory importance concerns, in particular, the content and form of the request and the distinction between an application and a request for leave depending on whether it is necessary for it to be authorised by the employer.

Support should be given to the author's opinion, according to which in the hypothesis of Art. 160, para. 1 LC a contract (agreement) is concluded between the employee and the employer for the amendment of the individual employment relationship, since the employer's authorization within the meaning of the said provision is in fact acceptance of the employee's request (proposal) for the use of unpaid leave. In this aspect, it is rightly assumed that the concluded contract is both a right-generating and a right-modifying legal fact, as it transforms the legal possibility of using unpaid leave under Art. 160, para. 1 LC into a subjective right. In case of non-approval on the part of the employer of the employee's request for use of leave under Art. 160, para. 1 of the Labour Code, there arises a labour dispute, which is not a legal one, and it is argued that the said dispute can only be resolved through mediation.

I find convincing the author's arguments for explicit legal regulation of unpaid leave in Art. 160, para. 1 of the Labour Code, these arguments being adduced in connection with the understanding set out in the labour law doctrine that unpaid leave is in fact a legal option that does not need to be specifically regulated by law. The possibility of negotiating unpaid leave in a collective bargaining agreement or in the employment contract is also examined, as well as the non-recognition of this leave as length of employment and its recognition as contributory service in the amount of 30 working days per calendar year, and Art. 10, para. 2 of the Social Security Code (SSC) is put under corrective interpretation.

The statement regarding the way of terminating the leave under Art. 160, para. 1 LC in case its use has already started, and the inadmissibility of its interruption or postponement is also of a contributory nature.

There is also well-grounded criticism of the opinion expressed in the labour theory, according to which the leave can be of a gratuitous or non-gratuitous nature, since leave is a subjective right and not a transaction, and therefore this division is inapplicable.

It is beyond doubt that the detailed and in-depth analysis of Art. 173, para. 2 LC is of a contributory nature. As far as I know, prior to the issue of the work under review, Art. 173, para. 2 LC has not been the subject of detailed examination in labour law literature.

Of contributory importance is also the analysis and comparison of unpaid leave under Art. 160, para. 1 of the Labour Code with the unilateral granting of unpaid leave by the employer without the consent of the employee, and the comparison with the unpaid leave which is a subjective right of the employee under Art. 160, para. 2 LC, and the conclusions made by the author.

Scientific and applied contributions can also be found in the last chapter of the work, in which the judicial practice is commented, although it is selected and, as a rule, affects indirectly the issue of lawfulness of the use of unpaid leave under Art. 160, para. 1 LC. This concerns, primarily, the conclusion that the unacceptable unilateral granting of unpaid leave by the employer is one of the possible hypotheses of unlawful temporary suspension from work within the meaning of Art. 214 LC.

4. Critical remarks and recommendations

The work under review was created nearly 7 years ago. This requires its updating in compliance with the newly published literature and the judicial practice relevant to the issues under consideration.

The work under review would have had more significant scientific and practical value if the comparative law research had not been limited to Russian legislation but had also covered other legislations, as well as acts of the EU and international institutions. The same applies to foreign language literature.

I do not accept the opinion maintained by the author, according to which the membership-cooperative legal relationship between a member-cooperator and the production cooperative is complex and, in addition to an employment relationship, also contains legal relationships of a proprietary and organizational nature (pp. 26 and 27 of the monograph). The current version of Art. 9, para. 2 of the Law on Cooperatives does not correspond to § 2 of the Supplementary Provisions of LC (this provision was adopted 15 years after the first one), to which the author refers. Art. 9, para. 2 of the Law on Cooperatives only provides

for a possibility, and not an obligation, of a cooperative producing goods and performing services to provide a member (not all members) of the cooperative with work under an employment relationship with the cooperative. This possibility exists in respect of all types of cooperatives, not only those under Art. 9, para. 2 of the Law on Cooperatives, which is defined by law as a production cooperative. The membership relationship with the cooperative and the employment relationship with it are legal relationships independent of each other that have different right-generating facts, different content, different protection and different termination grounds.

Despite the arguments presented by the author, I have some reservations about qualifying as potestative (transformative) the right that results from the transformation of a legal possibility into a subjective right under Art. 160, para. 1 LC (pp. 111-116 of the dissertation). Potestative rights should be regulated by law and may not be created on the basis of a contract concluded between the subjects, as is undoubtedly the case present in the hypothesis of Art. 160, para. 1 LC.

5. Conclusion

On the basis of the above, it can be concluded that the dissertation 'Unpaid Leave under Art. 160, Para. 1 of the Labour Code' contains theoretical generalizations and practical solutions to a significant scientifically applied issue that are an original contribution to the labour law doctrine, which is why I give my positive evaluation and propose to the scientific jury to award to Assoc.Prof. Dr. Ivaylo Ivanov Staykov the scientific degree of 'Doctor of Juridical Science'.

15 December 2022

Reviewer:

Prof. Georgi Stefanov, J.S.D.