

OPINION

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Professional field 3.6 Law
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Under a procedure for public defence of a dissertation for acquiring a scientific degree of 'Doctor of Science' in professional field 3.6 Law (Labor Law and Social Security) by the candidate

Assoc.Prof. Dr. Ivaylo Ivanov Staykov

1. Significance of the issue under research in scientific and applied terms

The dissertation under the title '**Unpaid Leave under Art. 160, Para. 1 of the Labour Code**', Avangard Prima Publishing House, Sofia, 2016 with a volume of 306 pages, presented by **Assoc.Prof. Dr. Ivaylo Staykov** in the current procedure for obtaining the scientific degree of 'Doctor of Science' in professional field 3.6 Law (Labor Law and Social Security) is the first comprehensive and systematic monographic study of one of the types of unpaid leave in which, on the grounds of Art. 160, para. 1 of the Labour Code, the employer, at the request of the employee, may grant him/her unpaid leave regardless of whether the latter has used or not his/her paid annual leave and regardless of the duration of his/her contributory service. Indicative of the importance of this study for the development of Bulgarian legal doctrine and judicial practice is the fact that the theoretical analysis is focused on an unexplored part of the thematically distinct legal matter of leave, which is regulated in the Constitution (Art. 48, para. 5) and in a number of international law sources and has extensive domestic regulation, and on which much judicial practice has been accumulated.

From a theoretical point of view, the work of Assoc.Prof. Staykov is an attempt **to substantiate a comprehensive scientific thesis about unpaid leave under Art. 160, para. 1** of the Labour Code (LC) as a legal option for the employee, which becomes his subjective right by way of an agreement being concluded between the employer and the employee, which, in terms of its nature and consequences, is regarded as an amendment made to the individual employment relationship by mutual consent of the parties under Art. 119 LC. The author argues that the employee's statement which expresses the will of the latter to take unpaid leave under Art. 160, para. 1 of the Labour Code creates for him/her a legal expectation, which becomes a transformative subjective right from the moment the employer gives his consent thereto and the agreement is concluded. The study also clarifies the legal guarantees for the use of this type of unpaid leave, which are expressed in the emergence of new subjective rights for the employee under the amended

employment relationship. The social security aspects of the institute under research are also clarified, in particular, the issue of whether the period of using the unpaid leave under Art. 160, para. 1 of the Labour Code should be recognized as contributory service.

In **scientific terms**, the study of Assoc.Prof. Staykov is important for improving the regulatory framework, because, in the main part of the work, the author has theoretically justified a number of proposals *de lege ferenda*, which are then systematized in the conclusion. In view of all this, it can be said that the work of Assoc.Prof. Staykov fills a gap in Bulgarian labour law literature and provides specialists and the general public with a good and practically useful reading, suitable not only for doctrine and law enforcement, but also for the development of regulatory acts.

2. Justification of the objectives and tasks in the dissertation

According to its author, the main objective of the dissertation is to explore the legal nature of unpaid leave under Art. 160, para. 1 LC through scientific analysis of historical experience, current legislation, theoretical developments and practice, and to formulate recommendations *de lege ferenda* to improve national legislation in view of the need for its more effective implementation. The objectives and tasks thus specified are justified by outlining the debatable issues related to the interpretation and application of the provisions of Art. 160, para. 1 LC, as well as the other related hypotheses of unpaid leave under § 3e, para. 1 of the Transitional Provisions of the Labour Code, Art. 54 of the Ordinance on Working Time, Rest and Leave and Art. 160, para. 2 LC. The state of the legal framework, judicial practice and the doctrine on unpaid leave under Art. 160, para. 1 LC and the absence of a comprehensive, thorough and systematic study thereof justify the main tasks of the dissertation that are focused on clarifying the differences of unpaid leave compared to the category of paid leave, classifying unpaid leave by types on the basis of scientifically based classification criteria, relying on their legally relevant features and indicating the place of unpaid leave under Art. 160, para. 1 LC among them, as well as conducting an analysis and summarizing the relevant judicial practice.

3. Correspondence between the chosen methodology of research and the dissertation objective and tasks

As pointed out in the introduction to the dissertation and its executive summary, the study of Assoc.Prof. Staykov is based on a set of general scientific and special methods for conducting scientific research, which are appropriately and adequately applied in view of the research tasks and objectives set by the author. The methods of critical analysis, synthesis, systematic and functional approach are skilfully combined with the method of formal logic, the comparison and distinction from

similar legal figures and other special methods used in the field of legal research. Although on pp. 11-12 of his work Assoc.Prof. Staykov has explained the considerations in view of which he has limited the application of the comparative law method of scientific research, I venture to recommend *greater* application of the comparative law method, and not only through stating the theoretical opinions in foreign Russian-language literature shown in detail in many places in the footnotes of the work, but also through analytical work with the very sources of foreign legislation, e.g. through interpreting the relevant provisions in force in the EU Member States, as well as through studying and discussing foreign judicial practice in the application of these provisions. I have briefly taken a view on this matter in point 6 of this Opinion.

In the dissertation, the author has appropriately and fruitfully used a wide range of different methods of interpreting the law (linguistic, functional, incl. logical in a narrow sense, systematic and teleological methods and corrective interpretation), as well as various ways of filling in the gaps in the law (analogy of law, law enforcement with *argumentum a contrario* and *argumentum a fortiori*).

4. Scientific and scientifically applied contributions of the dissertation (description and evaluation), including the presence of an original contribution to science

According to Art. 12, para. 4 of the Law on Academic Staff Development in the Republic of Bulgaria (LASDRB) and Art. 41 of the Ordinance on the Development of the Academic Staff of New Bulgarian University (NBU), the dissertation for acquiring the scientific degree of ‘Doctor of Science’ must contain theoretical generalizations and solutions to major scientific or scientifically applied issues that conform to modern achievements and represent a significant and original contribution to science. The interpretation of this provision shows that the dissertation must meet several cumulative substantive law requirements in order to be successfully defended for the acquisition of the scientific degree of ‘Doctor of Science’: (1) it must contain theoretical generalizations; (2) it must provide solutions to major scientific or scientifically applied issues; (3) these theoretical generalizations and solutions must conform to current achievements and (4) it must represent a significant and original contribution to science.

Although the work deals with a relatively narrow scope of labour law issues and is focused on one of the types of unpaid leave, namely the leave under Art. 160, para. 1 of the Labour Code, the theoretical analysis of the legislation, the judicial practice and the doctrinal concepts that has been made in the study is wide-ranging and contains numerous scientific contributions. The author has analyzed in detail the legal features and the legal nature of unpaid leave under Art. 160, para. 1 of the Labour Code and, on the basis of a systematic analysis, has outlined its essential legal features and has clarified its relationship with paid leave, and has distinguished it from the other types

of unpaid leave, making a very thorough analytical examination of judicial practice in the application of the provision of Art. 160, para. 1 LC, this examination being useful for both the doctrine and the practice. Although the subject of the study is only one separate type of unpaid leave, the way in which the author has approached this socially and legally significant topic has allowed him to formulate theoretical generalizations useful for doctrine and practice as well as to offer solutions to important scientific issues on this topic that have not been fully and systematically addressed in our theory thus far. Undertaking for the first time in our doctrine to make a comprehensive and systematic monographic study of unpaid leave under Art. 160, para. 1 LC, Assoc.Prof. Staykov has theoretically justified classification constructions for the types of unpaid leave according to various classification criteria; he has drawn three legal constructions on unpaid leave interpretatively; he has examined the concept of ‘forced unpaid leave’ and has reached a conclusion which is practically significant for lawmaking and law enforcement, namely that the legal framework of each type of unpaid leave in the current Bulgarian positive law is determined by its social and legal purpose and, through this prism, he has clarified the peculiarities of the legal regime of unpaid leave under Art. 160, para. 1 LC and has proposed a theoretical definition of the concept of ‘leave – legal opportunity’, and, in particular, the unpaid leave under Art. 160, para. 1 LC, and has given a legal characteristic of the concept of ‘unpaid leave’ distinguishing it from paid leave, etc. In the course of the study, Assoc.Prof. Staykov did not limit himself to the strict framework of labour and social security issues, but also touched on issues of general theoretical nature, such as those of administrative law, civil law, constitutional law and other branches of law.

Based on the theoretical conclusions from his analysis, Assoc.Prof. Staykov has also made useful and scientifically based proposals to improve the current legal framework. I think that of particular importance for legal security in this regard are the author’s proposals for introduction of a regulatory requirement for a written form of validity of both the employee’s request and the employer’s authorization of unpaid leave.

5. Evaluation of publications relating to the dissertation: number and nature of the periodicals in which they are published

In this procedure, the applicant has presented 17 scientific studies and articles on the topic of the dissertation published in scientific journals and proceedings of scientific conferences and seminars, as well as abstracts of scientific reports from scientific and practical conferences, which are shown in a list to the executive summary. These works contain in-depth theoretical analyses on issues related to the dissertation topic, and are characterized by a rich scientific apparatus, and contain subject reference to judicial practice and are published in academic collections with scientific editorials, in specialized legal periodicals, etc. The following are among them: the series ‘Current Issues of Labour and Social Security Law’ published by University Press ‘St. Kl. Ohridski’; Yearbook of the Department of Law of New

Bulgarian University; Proceedings of the Jubilee International Scientific Conference on the occasion of the 25th anniversary of the Faculty of Law at the University of Veliko Tarnovo 'St. Cyril and Methodius'; Scientific and Practical Conference Proceedings issued by the Law Faculty of Ruse University 'Angel Kanchev'; Proceedings of the scientific conference held at the National Military University (NMU) 'V. Levski'; 'Ius Romanum' journal, 'Contemporary Law' journal, 'Business and Law' journal, etc.

Some of the presented works, which are thematically related to the dissertation, are focused on issues of more general theoretical importance, such as the article 'Subjective Rights and Legal Opportunities in Labour Law' in: Law and Rights. Proceedings in memory of Prof. Dr. Rosen Tashev, Sofia: University Press 'St. Kl. Ohridski', 2016, pp. 420-439. Other articles deal with more specific, practically significant aspects of the topic of unpaid leave under Art. 160, para. 1 LC, such as the article 'Is it permissible for the employer to offer employees to take unpaid leave under Art. 160, para. 1 of the Labour Code in case of enterprise downtime?' in: Proceedings of the Annual University Scientific Conference of NMU 'V. Levski', 14-15 June 2018, Volume 8 – Scientific field 'Social, Economic and Legal Sciences', Veliko Tarnovo: NMU Publishing House 'V. Levski', 2018, pp. 202-210. All the listed works of Assoc.Prof. Staykov, thematically related to his dissertation, are at a high theoretical level, further develop and enrich the author's theses covered in his dissertation and contribute in general to the clarification of some aspect of the topic of unpaid leave under Art. 160, para. 1 LC.

In addition to being a specialist in the field of labour law and social security, 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. A number of his articles deal with various aspects of the legal framework of privatization process, the institute of business intolerance and other private law institutions. Especially in the last decade Assoc.Prof. Staykov has published numerous scientific articles and studies in which he explores a number of issues of civil law¹, company law², commercial and social security law³, competition⁴,

¹ Стайков, Ив. Осигурителен договор в полза на трето лице. – В: Актуални въпроси на частното право. Сборник с доклади от национална научна конференция в чест на 95-ата годишнина на проф. д-р Емил Георгиев, организирана от катедра „Гражданскоправни науки“ на Юридическия факултет на Софийския университет „Св. Кл. Охридски“, гр. София, 15.12.2016 г. София: УИ „Св. Кл. Охридски“, 2018, с. 106-116. ISBN 978-954-07-4468-1; с.а. Предявяване на иск за установяване на трудов и/или осигурителен стаж от наследник(ци) на починало лице. – В: Сборник научни изследвания в памет на доц. д-р Кристиан Таков. Статии от международна научна конференция в памет на доц. д-р Кристиан Таков (1965-2017), организирана от катедра „Гражданскоправни науки“ на Юридическия факултет на Софийския университет „Св. Климент Охридски“, катедра „Частноправни науки“ на Юридическия факултет на Великотърновския университет „Св. св. Кирил и Методий“ и фондация „Кристиан Таков“, 7.06.2018 г., гр. София. София: Университетско издателство „Св. Климент Охридски“, 2019, с. 585-596. ISBN 978-954-07-4746-0; с.а. За противоконституционността на правната уредба на наследяването в допълнителното задължително пенсионно осигуряване. – В: Актуални въпроси на семейното и наследственото право. Сборник с доклади, изнесени на национална научна конференция в памет на проф. Лиляна Ненова (1921-1996), организирана от катедра „Гражданскоправни науки“ на Юридическия факултет на Софийския университет „Св. Климент Охридски“, гр. София, 22 октомври 2015 г. София: УИ „Св. Климент Охридски“, 2017, с. 243-266. ISBN 978-

civil procedure⁵, etc. The scientific searches of Assoc.Prof. Staykov also extend to other legal areas, including special administrative law. In this respect, it is worth mentioning the interesting and useful monographic study of Assoc.Prof. Staykov entitled ‘Employment status of the members of the Council for Electronic Media’, Avangard Prima Publishing House, Sofia, 2016, 353 p. In addition, on the basis of the results of his research activities, Assoc.Prof. Staykov has also contributed to the preparation of decisions on interpretative cases initiated at the Supreme Administrative Court⁶. I would say that these scientific works of Assoc.Prof. Staykov outline him as a broad-spectrum scholar in the field of legal studies, who has made theoretical contributions of practical importance, going beyond the boundaries of his narrow scientific field of labour and social security law. Assoc.Prof. Staykov is an author whose works are often cited in scientific works not only in the field of labour and social security law, but also in other branches of private law, such as civil and commercial law, in relation to topics and theoretical and practical issues that he has developed in his rich scientific work.

There is no evidence of plagiarism within the meaning of § 1, item 7 of the Additional Provisions of the Academic Staff Development in the Republic of Bulgaria (LASDRB) in Assoc.Prof. Dr. Ivaylo Ivanov Staykov’s scientific papers presented for the review.

954-07-4265-6; с.а. За договорния характер на трудовото правоотношение. – Електронно списание IUS ROMANUM, 2021, извънреден брой – 70 години 33Д, с. 63-81, на интернет адрес https://iusromanum.info/wp-content/uploads/2021/11/2021-izvynreden-IUS_ROMANUN_2021_ZZD_OK_23_11.2..pdf (iusromanum.info) [електронен ресурс]. ISSN 2367-7007 (online) и др.

² Стайков, Ив. Търговската банка като осигурителен посредник в българското обществено осигуряване. – В: Сборник доклади от Годишна университетска научна конференция на Национален военен университет „Васил Левски“, 27-28 юни 2013 г. Том 8 – Научно направление „Социални, стопански и правни науки“. Велико Търново: Издателски комплекс на НВУ „Васил Левски“, 2013, с. 115-122. ISSN 1314-1937 и др.

³ Стайков, Ив. Договори за осигурително посредничество в допълнителното социално осигуряване. – сп. Съвременно право, 2016, № 4, с. 60-81. ISSN 0861-1815

⁴ Стайков, Ив. Клауза в трудов договор, която въвежда забрана за работа при работодател с конкурентна стопанска дейност. – В: Развитие на правото в глобализиращия се свят. Юбилеен сборник по случай 100-годишнината от рождението на акад. Любен Василев и проф. д.ю.н. Живко Сталев и 90-годишнината от рождението на проф. д.ю.н. Витали Таджер. С.: Феня, 2013, с. 235-253. ISBN 978-619-163-017-2 и др.

⁵ Стайков, Ив. Процесуална легитимация (надлежни страни) в съдебното производство за установяване на трудов и/или осигурителен стаж. – В: 100 години от рождението на проф. Борис Яновски. Сборник студии и статии. София: УИ „Св. Климент Охридски“, 2019, с. 263-278. ISBN 978-954-07-4913-6; с.а. Предмет и характер на исковете за установяване на трудов и/или осигурителен стаж. – В: Сборник трудове от Юбилейната научна конференция по повод 10 години от създаването на НВУ „Васил Левски“, 14-15 юни 2012 г. Том 5 – Научно направление „Социални, стопански и правни науки“. Велико Търново: Издателски комплекс на НВУ „Васил Левски“, 2012, с. 172-181. ISBN 978-954-753-095-9; Стайков, Ив. Обща характеристика на съдебното производство за установяване на трудов и/или осигурителен стаж. – сп. Норма, 2012, № 5, с. 5-18. ISSN 1314-5126; с.а. Процесуално представителство на страните в исковия процес за установяване на трудов и/или осигурителен стаж. – В: Сборник доклади от Годишна университетска научна конференция на Национален военен университет „Васил Левски“, 14-15 юни 2018 г. Том 8 – Научно направление „Социални, стопански и правни науки“. Велико Търново: Издателски комплекс на НВУ „Васил Левски“, 2018, с. 211-218. ISSN 1314-1937 и др.

⁶ Обезщетение за вреди, причинени от отмяната на незаконно уволнение на държавен служител (становище относно тълкувателно дело № 2 от 2021 г. на Общото събрание на съдиите от колегиите на Върховния административен съд). – News Lex.bg. Електронно издание. Научни и практически публикации, 18 февруари 2022 г., на интернет адрес <https://news.lex.bg/guestpost/обезщетение-за-вреди-причинени-от-отм/> [електронен ресурс]

6. Remarks and recommendations

In view of the next editions that the dissertation of Assoc.Prof. Staykov will most probably have because of its indisputable usefulness for Bulgarian labour law science and judicial practice, I dare to recommend to the author **to widen the application of the comparative legal method of scientific research**. The scientific and cognitive value of the work could be even greater if the author also makes analytical comparisons between the regulation of unpaid leave under Art. 160, para. 1 of the Labour Code, which is adopted in our country, and the regulation of this institute in other EU countries whose regulations are available to him. On this basis, the conclusions and the assessment of the regulation in Bulgaria could be deepened and proposals could be made for borrowing (probably) more expedient foreign regulatory solutions, if the author finds this reasonable and justified. I would like to underline, in particular, that these remarks and any other possible ones do not at all affect the conclusion about the indisputable scientific merits and contribution of the reviewed work and are not such as to shake my conviction that the dissertation deserves high assessment.

7. Conclusion with a clearly formulated positive or negative evaluation of the dissertation

On the basis of the considerations set out in the motivational part of this Opinion, I find that the dissertation work entitled **‘Unpaid Leave under Art. 160, Para. 1 of the Labour Code’**, Avangard Prima Publishing House, Sofia, 2016 with a volume of 306 pages, presented by **Assoc.Prof. Dr. Ivaylo Ivanov Staykov**, as well as the other scientific works with which he participates in this procedure, meet all the requirements of the Law on Academic Staff Development in the Republic of Bulgaria, the Regulations for its implementation and the Ordinance on the Development of the Academic Staff of New Bulgarian University for obtaining the scientific degree of ‘Doctor of Science’, in view of which **I give my POSITIVE EVALUATION of the application of Assoc.Prof. Dr. Ivaylo Ivanov Staykov and I will vote positively for him to receive the scientific degree of ‘Doctor of Science’**.

27 November 2022

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Prof. Ekaterina Mateeva, DSc