

OPINION

given by Prof. Dr. Simeon Vladimirov Tasev

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regarding: dissertation for acquiring the scientific degree of 'Doctor of Science' in Higher Education Domain 3. 'Social, Economic and Legal Sciences', Professional field 3.6. 'Law', Scientific specialty 'Labour Law and Social Security'

author: Assoc.Prof. Dr. Ivaylo Ivanov Staykov

topic: Unpaid leave under Art. 160, para. 1 of the Labour Code

grounds: participation in a scientific jury appointed by Order 3-PK-17/05.10.2022 of the Rector of New Bulgarian University

General characteristics of the dissertation

The dissertation of Assoc.Prof. Dr. Ivaylo Ivanov Staykov on the topic 'Unpaid Leave under Art. 160, Para. 1 of the Labour Code' is a successful attempt at a comprehensive theoretical study of one of the classical types of leave in Bulgarian labour law, namely the unpaid leave under Art. 160, para. 1 LC.

The dissertation was published as a book under the same title in the fall of 2016, which has 307 printed pages. The structure of the content of the work includes an introduction, four chapters, a conclusion and a bibliography of the literature used. The chapters contain paragraphs and items in which issues related to the examination of the subject under study are presented by topics. The bibliography of the sources used in the study includes 238 titles in Bulgarian and foreign languages.

There is no independent monographic study on the legal framework of unpaid leave under Art. 160, para. 1 of the current Labour Code of the year 1986. This circumstance determines the scientific novelty and originality of the study. The content of the work is characterized by logic and consistency of the scientific text; deduction and argumentation of the author's theses; identification of problematic points and proposing legislative solutions through respective changes. The dissertation presents a considerable amount of judicial practice, which contributes to its practical importance. The historical and comparative legal research methods that are used enrich the theoretical significance of the study. The author uses the methods of interpretation in law, as well as logical means of overcoming gaps in the law. This fact evidences the author's knowledge of legal dogmatics and his ability to build a scientifically based analysis of the current legal framework. From the point of view of theory and practice, the proposals made *de lege ferenda* for future improvements of the regulatory framework of the issues under examination deserve attention. The proposals *de lege ferenda* in the dissertation show Ivaylo Staykov's ability for in-depth scientific analysis and identification of problems in the legal framework and its enforcement. What makes a good impression is the author's ability to propose a specific version of the relevant new legal rule or to amend an existing one, which is of great benefit to the legislator.

Evaluation of scientific and applied results and originality of the dissertation

1. A very meaningful analysis is contained on p. 30 *et seq.* regarding the relationship between employment relationship and service relationship, including the author's thesis about a complex legal relationship in which an employment relationship is included, as well as the conclusion drawn on p. 36 regarding the unpaid leave of a civil servant under the Law of the same title.
2. In § 3 of Chapter Two, the critical remarks on the concept of 'unpaid annual leave' (pp. 60 *et seq.*) are interesting and well grounded.
3. The author's opinion that unpaid leave may be granted in the form of calendar or working days must be accepted as correct (pp. 69-73).
4. In § 5 of Chapter Two, it is rightly maintained that the 'agreement' is the act by virtue of which the right to unpaid leave under Art. 160, para. 1 LC arises.
5. The thesis of the so-called 'transformation of the leave under Art. 160, para. 1 LC into a subjective right by agreement between the parties to the employment relationship (the whole § 6 of Chapter Two) is original and represents a scientific novelty.
6. Justified and original for the legal theory is the author's opinion on the type of the right to leave as being a subjective transforming right (pp. 111-116).
7. The analysis of the so-called 'reflexive (side)' legal consequences of the use of unpaid leave under Art. 160, para. 1 LC after the legal possibility has turned into a subjective right (pp. 117 *et seq.*) is of a contributory nature.
8. The criticism regarding the division of types of leave into non-gratuitous and gratuitous ones (the whole § 11 of Chapter Two) found in the literature is justified.
9. The type classification of unpaid leave under the current legislation on the basis of different classification criteria should also be marked as a significant scientific contribution.
10. A contribution to the legal theory and a recommendation to the legislator are the numerous proposals made *de lege ferenda* for the improvement of labour and social security legislation, which are systematized appropriately in the conclusion of the dissertation (pp. 289-291).

Critical remarks and recommendations

1. There is a certain difference in the volume of the individual chapters of the dissertation: Chapter One – 37 p.; Chapter Two – 142 p.; Chapter Three – 28 p.; Chapter Four – 69 p. In the future revision of the scientific work, Chapter Two can be divided into two chapters with the relevant paragraphs by topics.
2. The last paragraph on p. 13 is unnecessary and in case of a new edition of the dissertation it should be struck out.
3. In the title of Chapter Four, the word 'commentary' should be replaced by 'analysis', as in many other places in the dissertation.
4. In the heading of § 1 of Chapter One, the words 'review of' should be deleted, and on p. 29 the words 'brief review' should be replaced by 'short analysis'.

5. As regards the analysis of admissibility of contractually established unpaid leave (§ 7 of Chapter Two), p. 98, I have doubts as to whether there has been an interpretation by *argumentum a fortiori*.

Evaluation of the executive summary

The executive summary presents the subject matter, the objective and the tasks of the dissertation, as well as its methodology and normative, theoretical and empirical basis. The content of the dissertation is divided into chapters and paragraphs. A reference to the main contributions and publications on the scientific research topic is presented. I believe that the executive summary presents fully and correctly the content and the essence of the dissertation, and it is written in accordance with the requirements for volume and content established in Bulgarian scientific literature.

Over the years, 15 scientific studies and articles in scientific journals and collections of scientific conferences have been published on the individual issues of the dissertation.

Conclusion

On the grounds of the aforesaid, the dissertation presented by Assoc.Prof. Dr. Ivaylo Staykov meets the requirements of Art. 12, para. 4 of the Law on Academic Staff Development in the Republic of Bulgaria and Art. 37, para. 1 of the Regulations for its implementation, namely it contains theoretical generalizations and solutions to major scientific or scientifically applied problems that correspond to modern achievements and represent a significant and original contribution to science. The dissertation undoubtedly shows that Assoc.Prof. Dr. Ivaylo Staykov has in-depth theoretical knowledge not only in labour law, but also in civil substantive and procedural law. The author is able to build well-founded theoretical constructions, to make well-grounded theoretical conclusions and generalizations, as well as to offer original scientific theses in the field of legal science.

The dissertation on the topic ‘Unpaid Leave under Art. 160, Para. 1 of the Labour Code’ of Assoc.Prof. Dr. Ivaylo Ivanov Staykov gives me grounds for its positive assessment.

I believe that Assoc.Prof. Dr. Ivaylo Staykov will successfully defend his dissertation in public and that each member of the scientific jury will give his/her positive assessment.

27 October 2022

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Prof. Dr. Simeon Tasev