EMPLOYEE WARNING NOTICE PRIOR TO EMPLOYMENT TERMINATION IN THE LEGISLATION OF THE REPUBLIC OF SERBIA – purpose, scope and legal consequences

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Abstract
Throughout the history of labour law, a dismissal has been the most powerful instrument allowing employers to "free" themselves from another contracting party without consequences. In contemporary development, there is a tendency to establish objective limitations on the termination of employment relationship by law, and thus provide employees with full protection during the procedure for the termination of an employment contract by the employer. These are the origins of the development of labour law. The author points out that since amending the Labor Law in 2014, domestic labor legislation has taken the opposite direction - towards tendencies destabilizing employees' position in the employment relationship and allowing the employers greater "freedom" in the employment contract termination. In this paper, the author analyses the procedure of the delivery of warning and legal consequences of the final verdict confirming the employer acted contrary to provisions of the law prescribing the procedure for employment termination. There is a controversy regarding Article 191, paragraph 7 of the Labour Law stipulating that if during the proceedings the court determines there were grounds for termination of the employment relationship, whereas the employer acted contrary to provisions of the law prescribing the procedure for termination of employment, the court shall reject the request of the employee to return to work, and shall order the payment of compensation for the employee's damages. By this provision, the legislator has relativized the dismissal procedure and allowed convalidation of procedural flaws by a court decision. Based on the concept of the rule of law implying due process of law as a guarantee of legal certainty, the aim of this paper is to indicate that material and procedural norms equally influence the legality of the termination of an employment contract.

Key words: *job security, dismissal, warning, warning delivery, legal consequences of a failure to deliver*

Introductory considerations

The protection of employees against the arbitrary dismissal by employers (at-will, at the discretion) is one of the priorities of national and international labour regulation**.** This issue is involved in the origins of the development of labour law (Obradović, G. & Perić, K. S., 2016, p. 100). In general, from the standpoint of international labour standards, the introduction of procedural requests prior to or at the time of the dismissal is more purposeful than considering procedural omissions during the process of determining the validity of the employer's decision to dismiss an employee. Although the termination of an employment contract is a unilateral declaration of will of one party of the employment relation, made in accordance with the law and aimed at the termination of an employment contract, taking effect on the date of delivery and not depending on other party's consent (Paravina, 1998, p. 145), there is a tendency to impose certain legal limitations for the cancellation an employment contract by the employer. This provides full protection and a guarantee to employees in the process of termination of an employment contract at the initiative of the employer. Namely, in modern labour law, employment security is guaranteed as an important segment of the right to work and presupposes normative intervention of the state (and social partners) in order to protect employees from arbitrary dismissal (Kovačević, 2016, p. 26). Employment security is based on the idea of imposing legal limitations on the autonomy of the will and the freedom of contract. This concept was developed with the legislative intervention of the state in labour relations and ensured its relevance by prescribing a "valid", "justified reason" for termination of employment in the Article 4 of Termination of Employment Convention concerning termination of employment at the initiative of the employer, 1982 (No. 158).[1] This contributed to objectifying conditions under which employment may be terminated if the employer wishes to dismiss an employee. Employment security is one of the dimensions of work security, that in a broader sense, implies the safe and fair working conditions. The proclamation of work security expresses a fundamental need of each individual to prevent or limit the scope of insecurity due to a possible job loss and/or other means of support, i.e., to protect health, obtain a pension and support, as well as an adequate financial and other kind of protection in case of illness, injuries, unforeseen expenses and unjustified - abusive dismissals. Work security is one of the components of the idea of decent work.[2] This aspect is generally related to social security arrangements, health

[1] "Official Gazette of the SFRY ", No. 4/1984.

[2] ILO, Decent Work, Report of the Director-General, 87th, Session, Geneva, June, 1999.

and safety regulations, freedom of association, non-discrimination, etc. (Godfrey, 2006, pp. 80-81). Actions undertaken considering a dismissal i.e. the termination of employment by an employer are motivated by the principle *in favour laborem (*eng. in favor of the workers) and are governed by labour legislation. However, these actions are also limited in regard to the employer's superiority (economic and legal) based on the "inviolability" of private property. Therefore, legitimate interests of employers must be respected within the scope of employment protection. In other words, legal provisions on the termination of employment are intended to ensure a stable and strong position of employees and stability of employment relation, whereas employment protection must not undermine a legitimate interest of employers to conduct business based on the "inviolability" of private property. Regulations should create a balance between the employment security/stability with regard to the employer's right to property. Creating such balance is challenging. Therefore, the mechanism of termination of an employment contract by the employer and limitations on employers' normative and disciplinary authority in the employment relationship must be considered exclusively from the aspect of employment protection. Although a moderate, reasonable job security is considered a characteristic of a good company, there is a widespread opportunistic view on desirability of strong employment protection based on economic performance (*ILO, Report,* 1999). The major instruments of the protection of employment security, and ultimately, of protecting employees against an "abusive dismissal", are legally established rules on the termination of employment contracts concluded either for a definite or an indefinite period of time, by the employer. Warning the employee of the existence of cause for dismissal is the first step in the procedure of termination of employment contract.

1. Warning an employee of the existence of grounds for dismissal

The first step in the process and the initial phase of the termination of an employment contract is a warning. Employer's warning to the employer about the reasons for dismissal is the act of initiating a dismissal procedure (Jovanović, 2012, pp. 328). In terms of the provisions of Labour Law of the Republic of Serbia [3] the employer shall, prior to termination of employment

Retrieved from http://www.ilo.org./public/english/standards/relm/ilc87/index.htm. 15/03/2019.

[3] Official Gazette of the Republic of Serbia , No. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017- decision of the Constitutional Court, 113/2017 and 95/2018 – authentic interpretation.

contract, *warn the employee in writing* of the existence of cause for termination of an employment contract *in case of the employee's breach of work duty* or *non-compliance with labour discipline* (article 180. paragraph 1). Written form of the warning is a condition for the lawfulness of the employment cancellation. Warning shall be issued in written form as well as other documents concerning decisions on the exercise of individual rights, duties and responsibilities of an employee. The required form is a condition for the validity of the employment contract termination procedure. Hence, verbal warning given by the employer (as well as the verbal dismissal) has no legal effect on the employee's employment status and consequently does not have a characteristic or relevance of the initiation of the dismissal procedure. If the employee is given a verbal notice of dismissal, in accordance with the opinion of the court practice (The Constitutional Court of the Republic of Serbia, Už. No.1813/2011 dated 19/12/2013), this notice has no relevance or characteristic of the dismissal by the employee prescribed by the Article 179. of Labour Law, since such notice has no legal effect on the employee's employment status; hence, the employee was not dismissed on that day. However, there is a completely opposite solution in Australian legislation prescribing that employers can terminate an employment contract verbally (XVIIIth Meeting of European Labour Court Judges, National reports, 2011, 7). Thus, the employer is obliged to inform the employee *in writing* of the existence of cause for termination of employment contract if there are *justified*, i.e., "*valid* reasons" (as stated in the Convention No. 158, Article 4) for the dismissal related to "the employee's conduct "- breach of work duty or non-compliance with labour discipline. In other cases, if justified reasons for termination relate to the employee's work capability or the employer's operational needs such as the employer's lack of work or in case the need for a particular type of work has ceased due to technological, economic or organizational changes, the employer is not obliged to warn an employee of the existence of cause for termination.

By issuing a warning, the employee is called to account. Namely, by delivering a written warning, the employee is warned about the possibility of the dismissal and the existence of cause for termination and becomes acquainted with circumstances and facts for being dismissed, in order to be provided an opportunity to defend himself/herself against the allegations made (Obradović & Perić, 2016, p. 129). This is in line with the "right to defence", as a basic presumption of lawfulness of an employment contract termination, as also explicitly stated in the Convention no. 158. According to this convention, the employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he/she is provided an opportunity to defend himself/herself against the allegations made, unless the employer cannot

be expected to provide such opportunity (Article 7, Section B)[4] Thus, the *purpose of warning* is to allow the employee the right of defence. Delivery of the warning to the employee on the cause for termination is part of the dismissal procedure prescribed by law. In that domain, court practice has confirmed that a decision on the dismissal rendered without a written warning on the existence of the cause for termination is unlawful.[5] The statute of limitations for responding to allegations made starts to run from the date of the delivery of the warning. Therefore, personal delivery is also a condition for the lawfulness of the employment termination procedure. In practice, there have been disputes concerning the relevance of the provisions relating to the delivery of warning, i.e. whether the provisions of the Law on General Administrative Procedure on the delivery of written document or provision of the Labour Law shall be applied with regard to the delivery of warning. This issue was resolved by the amendments to the Labour Law in 2017[6] which amended Article 180, paragraph 3, by stipulating that the dismissal warning shall be delivered to the employee in a manner prescribed for the delivery of a decision on cancellation of an employment stipulated in Article 185 of the Labour Law. According to the aforementioned provision of the Article 185, *the delivery of the ruling on the cancellation of an employment contract in written form* is an obligatory and integral part of the dismissal procedure. If the employer decides on individual rights, duties and responsibility of the employee, and *fails to make or deliver a ruling to the employee* in accordance with the law, the employer shall be charged with an offence.[7] An employment contract shall be cancelled by a ruling in writing (Article 185, paragraph 1). The ruling shall be *delivered to the employee in person* in employer's premises, or to employee's residence or abode address. Should the employer be unable to deliver the ruling to the employee in the above described manner, the employer shall be obliged to make a note in writing (Article 185, paragraph 2 and 3) describing the act of delivery and stating reasons for being unable to deliver the ruling to the employee.[8] In case

[4] In that respect Recommendation No. 166 on termination of employment initiated by the employer foresees the obligation of informing the employee in writing about the cause for dismissal.

[5] Judgment of the Supreme Court of Cassation, Rev 2. 1046/2013 dated 5/02/2014.

[6] Official Gazette of the Republic of Serbia, No. 113/2017.

[7] In that case a fine ranging from RSD 600.000 to1.500.000 shall be imposed on the employer with a status of legal entity for committing an offence (Article 274, paragraph, 1, item 15).

[8] "A delivery of a ruling on the termination of an employment contract in written form is considered executed at the moment of handing over the ruling to the employee, regardless of the fact that the employee, after being informed about the ruling, refused to sign the delivery note and left the ruling at the employer's premises"

of a failure to deliver the ruling to the employee noted in written form, the ruling *shall be posted on the employer's noticeboard*, whereas eight days following the posting the ruling shall be deemed to have been delivered.

The warning shall be issued immediately before the termination of the employment contract for a specific violation, whereas general warnings for possible future violations do not fulfil the purpose of a warning provided in Article 7 (Section B) of the ILO Convention No. 158 regarding the procedure prior to and at the time of termination of employment.[9] Thus, the dismissal warning shall relate to a specific violation, i.e. "the employer's warning to the employee of the existence of cause for termination of the employment contract may produce legal effects solely in respect of the employee's breach of duty preceding the warning." [10] In terms of a decision of the Court of Appeal, should the court determine the employee's breach of duty during the proceedings, whereas this breach of duty is not the one stated in the warning and the decision on the termination of the employment contract, the ruling on termination shall be annulled.[11]

The employer shall state in the warning the following: 1) *grounds* for dismissal; 2) *facts* and *evidence* indicating the conditions for dismissal were met; and 3) *a specified period of time* for responding to the warning. Should the employer deliver a warning whereas not state the reasons for dismissal (grounds for dismissal), *facts* and *evidence* indicating the conditions for dismissal were met and *a specified period of time* for responding to the warning, the termination of the employment contract shall be considered unlawful [12] since the content of such warning fulfils only procedural requirements, whereas not fulfilling material legal requirements. According to the assessment of the Supreme Court of Cassation, if the warning does not contain all legal elements, the employee is deprived of the basic right, the right to defence i.e. the right to respond to allegations against him/her regarding non-compliance with labour discipline. Additionally, the employee is entitled to this right under the ILO Convention No. 158.[13]

(Decision of the District Court in Valjevo, GŽ.. 1. No. 433/2005 dated 27/2/2005).

[9]From Judgment of the Supreme Court of the Republic of Serbia Rev II. 207/2008 dated 18/06/2008.

[10]From judgment of the Commercial Appellate Court, PŽ. 3308/2014 dated 13/02/2015, Current case law within various areas of law, No.4/2016.

[11]Judgment of the Court of Appeal in Novi Sad, GŽ. 1 2438/2013 dated 27/01/2014.

[12] "Warning about termination of an employment contract shall be issued in writing and shall state the reasons for dismissal." (Judgment of the District Court in Belgrade, GŽ. 1. No. 1709/03 dated 3/12/2003).

[13]"The plaintiff was issued with a warning of the existence of cause for termination of employment containing imprecise and general reasons regarding her conduct.

2. Legal consequences of warning vs. comparative practice

Time limit for the employee to respond to allegations made in the warning starts from the day of delivery of the warning. The period of time within which the employee is entitled to respond to the warning is *not less than eight days.* The law stipulates a minimum time limit (eight days). Hence, the employer may set a time limit that exceeds eight days. The employer shall not cancel the employment contract before the expiry of the time limit for the employee's response to allegations in the warning. Therefore, in the warning, the employer shall specify the number of working days within which the employee shall respond. "A delivery of a warning about the existence of cause for termination is lawful in case the employee reads the warning, but refuses to sign the delivery note and the warning is subsequently posted on the notice board".[14]

Following the employee's response (putting up a defence against the allegations stated in the written warning), the employer considers termination of employment depending on the existence of justified disciplinary reasons for dismissal. Otherwise, if there are extenuating circumstances or if the nature of breach of duty or non-compliance with labour discipline is not such as to be sufficient for the termination of an employment contract, the employer may take action in two ways: First, the employer may impose a certain measure prescribed by the law – temporary suspension from work without compensation of earnings for a period of one to 15 working days; a fine of up to 20% of the basic earnings of the employee for a period of up to three months (Article 179a). Second, the employer may issue a warning with a threat of dismissal – as a disciplinary measure. In this case, the employer may notify the employee that the employment contract shall be terminated without a repeated warning if the employee commits the same or similar breach of duty, or non-compliance with labour discipline within the next period of six months (Article 179a, paragraph 1, item 3). Thus, the law prescribes two forms of warning of the employee about the existence of cause for termination of an employment contract. In the first case, a written warning is a required legal form in the dismissal procedure. In the second case, the employer shall not dismiss the employee; however, the employer warns the employee about the breach of duty and notifies him/her about extenuating circumstances, i.e. the nature of breach of duty is not such as to result in immediate termination of the employment contract. However, the employee is also informed that in case of committing the same or similar breach

Specific actions of plaintiff that were the cause for termination of the employment contracts and termination of employment could not be determined within this warning." Decision of the Supreme Court of Cassati**on** of the Republic of Serbia, Rev 2 770/2014 dated 16/09/2015.

[14] Judgment of the Supreme Cassation Court, Rev 2. 150/2014 dated 10/4/2014.

of duty, the employer may automatically terminate the employment contract without a repeated warning (termination warning notice). Hence, as pointed out by professor P. Jovanović, a warning may also be a *final act* of the employment termination procedure (2012, p. 329), and not only the act of initiating the issue of the employee's liability for the breach of duty or non-compliance with labour discipline.

The employee may attach to the plea regarding allegations made in the warning the opinion of the trade union he/she is a member of, within the time period specified for the employee's written response to the warning (Article 181). The employer is obliged by the Labour Law to take into account the attached opinion of the trade union if it is delivered within the period of eight days following the day of the delivery of the warning. The trade union is obliged to provide an opinion upon an employer's request. In case of an employer without the established trade union, in accordance with the law, the employee may request an opinion of a representative designated by the employees.[15] The opinion of the trade union is not binding for the employer. However, by not considering the attached opinion of the trade union or employees' representatives, the employer violates the law consequently impacting the decision on the termination and the dismissal is hence unlawful.

The employer may issue a warning of the existence of cause for termination of an employment contract exclusively within the time limit (subjective and objective time limit) stipulated in Article 184 of the Labour Law.[16] Under the Labour Law, the statute of limitation uniquely establishes time limits for all cases of termination of an employment contract by the employer, except for cases of the employee's responsibility for *committing a criminal offense* at work or related to work. It may be concluded that the expiry of limitation periods due to the Statute of Limitations in the employment termination procedure has found application in two in two mutually dependent, and, according to legal basis, scope and consequences, different procedural regimes. The first relates to limitation periods in cases when justified grounds for dismissal relate to an the work capability and conduct of an employee, that is, in case a breach of duty and non-compliance with labour discipline *do not have the elements of a criminal offense* (Article 184, paragraph 1), and the other relates to limitation periods in case a breach of duty *contains elements of a criminal offence* (Article 184, paragraph 2). The limitation period within which the employer may terminate an employment contract in case the employee's breach of duty i.e. non-compliance with labour discipline do not have elements of a criminal offence is six months from the day the employer learned of the facts that are grounds for dismissal i.e. within one year from the occurrence of

[15] Labour Law, Article 16, paragraph 1, item 5).
[16] From: Judgment of the Supreme Cassation Court, Rev.2 47/2013 dated 25/4 2013.

the facts which are grounds for dismissal. Legislators distinguish two limitation periods for employment termination: *a subjective and an objective time limit.* Subjective time limit starts to run from the day the employer learned of the facts that are grounds for dismissal and it is the period of six months. Such knowledge includes not only a breach of work duty, but also the perpetrator of the breach. If the act of the breach of duty is discovered prior to the discovery of the perpetrator, the day of the identification of the perpetrator is considered as the day the employer learned the facts regarded as grounds for dismissal. A reverse situation is not possible. It is possible to learn about the breach of duty and the perpetrator of the breach at the same time. In this case, limitation period starts from the moment of learning the fact of the breach of duty and the perpetrator of the breach. The moment of learning about the breach of duty and the perpetrator of the breach is determined according to the moment such information was received by persons and authorities in charge of deciding on the rights, obligations and responsibilities arising from the employment relationship.[17] This time limit starts from the first day following the day on which the information about the breach of duty reached the authority in charge of for initiating disciplinary proceedings, i.e., authorized persons, and not any of the employees. Other employees are obliged to report the breach of duty and the perpetrator. The objective deadline is *one year* and starts the date of the occurrence of the facts that are grounds for dismissal (in case of a breach of duty). The objective term represents the longest duration of the period within which the employer has the opportunity to cancel an employment contract. After the expiration of this time limit, there is no possibility for the initiation of termination procedure. In other words, after the expiration of this deadline, the employee does not have the possibility to terminate the employee's employment contract. The subsequent findings shall not activate the employment termination procedure and the employee's liability. This deadline starts on the first day following the day on which the employee committed a breach of duty that is the grounds for the termination of an employment contract. Accordingly, the subjective time limit can only be carried out within an objective period. The objective time limit reduces the duration of the subjective time limit, since the objective time limit cannot be extended.

This normative provision is a part of the employment termination procedure and is intended to provide the employee with an opportunity to defend himself/herself against allegations made by the employer and as such represents an obligatory phase of the termination of employment initiated by the employer in order to terminate an employment contract ex lege in the manner prescribed in terms of the provision of Article 7, Convention No. 158.

[17]Judgment of the Supreme Court of the Republic of Serbia, Rev. 2138/93, dated 17/ 06/1993.

A question arising from the aspect of the principle of the rule of law concerns the scope, role and purpose of warning as an obligatory procedural action in the employment termination procedure, if the legal consequences of the wrongful termination of employment do not burden the decision on termination in all cases (in terms of Article 191 and in relation to Article 191 paragraph 7 of the Labour Law), i.e. not all of the legal consequences of such decision on the termination of employment are annulled. Namely, if during the proceedings the court determines there were grounds for termination of employment relationship, whereas the employer acted contrary to provisions of the law prescribing the procedure for termination of employment, the court shall reject the request of the employee to return to work, and shall order the employer to compensate the employee's damages in the amount of up to six earnings. The legislator states that the court shall deny the employee's request to return to work and shall compensate the employee's damages in the amount of up to six earnings if, we emphasize , the employer has acted contrary to the provisions of the law that prescribe the procedure for termination of employment.

Thus, legislation "grants amnesty" to the employer for violating a procedure for termination of employment prescribed by law "employment termination procedure". This reasonably raises a question of the purpose of such decision bearing in mind that the dismissal procedure requires only one obligatory procedural action from the employer - the obligation to warn the employee in writing about the existence of cause for termination of employment, and one conditionally obligatory action -in case the employee submits with his/her plea an opinion of a union he/she is a member of, the employer is obliged to consider the opinion of the trade union.

Consequently, in practice, if warnings have material or procedural defects, e.g. a warning has not been delivered, has not been issued in writing, the submitted opinion of the trade union was not considered, etc. (these are only some of the subjective assumptions of the author on what actions of the employer may be regarded as acting contrary to the provisions of law prescribing the procedure for termination of employment), the legal consequences of such "flawed" decision on the termination of an employment contract do not burden the lawfulness of the employer's decision, but are compensated by the monetary compensation for employee's damages at the expense of the employer's resources, provided that there were grounds for termination of employment. Hence, the court will deny the employee's request to return to work and shall compensate the employee's damages in the amount of up to six his/her earnings.[18] The amount of the established compensation shall

[18]Earnings shall be considered as earnings that the employee earned in the month preceding the month in which his/her employment relation was terminated (Article 191 paragraph 8).

be reduced by the amount of income earned by the employee performing work following the termination of employment relationship (Article 191, item 9). Such provision provides greater legitimacy to the employer's interests (inviolability of private property). It may be concluded that legal basis for termination of employment is of greater value for the legislator than the procedural norms for implementing the termination of employment based on universal human rights. Expert public considered this fact as leading to destabilization of employees' legal position as subjects of law, since such provision is contrary to the concept and principles of the rule of law. Namely, the requirement of the rule of law is prominent, in the procedure prescribed. Inter alia, the rule of law implies an appropriate legal process *(due process of law)*, i.e. the rule of law implies a proper process of law, i.e., the existence of rules on an impartial and fair procedure allowing the settlement of a dispute, whereas simultaneously offering guarantees of legal security and individual freedom. It may be noted that the controversial norm "gives privileges to employers by exempting them from liability for breach of the provisions of law relating to the termination of employment" (Đukić, 2014, p.73). From the aspect of legal consequences such normative solution is neither supported by the postulates of the rule of law, nor by comparative law. We will introduce some legislative solutions:

French law distinguishes between an irregular dismissal due to a failure to comply with the prescribed procedure and a wrongful dismissal reflected in different consequences (Despax, M., & Rajot, J., & Laborde, J. P., 2011, p. 163). Namely, the Labour Law in France prescribes that in case of the termination of the employees' employment relationship without following the prescribed termination procedure, however, due to a real and serious cause, the court shall order the employer to carry out a regular procedure while the employee shall receive a dismissal compensation from the employer that does not exceed the amount of one month of gross salary.[19] In German labour legislation, a warning may be referred to as a warning only if the employer has made remarks regarding the employee's conduct in a clearly noticeable manner to the employee and at the same time indicted that repeating such conduct may pose a serious threat to the employment relationship (Halbach, G., & Paland, N., & Schwedes, R., & Wlotzke, O., 1994, p. 186). The function of a warning and a notice issuing a warning to the employee not to breach his/her duty arising from employment does not necessarily include threats of imposing measures related to the right to terminate employment (a notice of an actual or early termination of an employment contract, or a dismissal due to changes to conditions of employment). The warning must not include the characteristics of a penalty

[19]Code du travail, Article L1235-2 applicable since 1/05/2008, Retrieved from: http://www.juritravail.com/codes/code-travail/article/L1333-1.html , 6/04/2019.

exceeding the aim of warning, otherwise it fulfils preconditions for an internal penalty. Such warning must not contain an assessment of the employee's personality and personal value. However, this does not prevent the employer from acting with regard to the seriousness of the employee's omissions (Halbach, G., *et. al.* 1994, p. 186). A warning to the employee to stop further breach of duty may have various objectives: it may serve as an indication of a dismissal, by informing the employee that a similar future breach of contract may pose a serious threat to the employment relationship; in accordance with the contract, the employee may issue a warning as a milder form of penalty compared to a dismissal (penal characteristic). In that regard are provisions of Article 119 of Labour Act in Croatia.[20] Article 119 of this law stipulates the following: prior to giving regular notice of dismissal due to the employee's misconduct, the employer shall be obliged to alert the worker in writing to his obligations arising from the employment contract indicating possible dismissal should the breach of obligations persists, unless circumstances exist due to which the employer cannot be reasonably expected to do so. Prior to giving a regular notice of dismissal due to the employee's misconduct or extraordinary notice of termination, the employer shall be obliged to give the employee an opportunity to present his/her defence, unless circumstances exist due to which the employer cannot be reasonably expected to do so. However, with regard to the controversial Article 191 we may conclude that national labour legislators have no aforementioned intention. In national Labour Law, a warning of termination of employment in case the reasons for termination involve work capability and conduct of an employee has the above described purpose, although the legislator uses the term notice instead of the warning (Article 180a related to Article 179 paragraph 1 item 1). Article 180a stipulates that the employer may terminate the employment contract of the employee or impose some of the measures prescribed by the law[21] in case there is a justified reason concerning the employee's work capability or conduct, if the employer has previously issued a written notice regarding the deficiencies in employee's

[20] NN 93/14, 127/17

[21] Measures prescribed by law in terms of Article 179a that may be imposed by the employer instead of termination of an employment contract : temporary suspension from work without compensation of earnings, for a period of one to 15 working days; a fine of up to 20% of the basic earnings of the employee for the month in which the fine was imposed, for a period of up to three months; warning with a threat of dismissal stating that the employer shall terminate the employee's employment contract without repeated warning if the employee commits the same breach of work duty, or non-compliance with labor discipline within the next time period of six months.

work, guidance and an appropriate deadline to for improving work, whereas the employee has not enhanced work performance within the given deadline.

Concluding considerations

A warning to an employee of the existence of cause for termination of an employment contracts can neither be considered as one in a series of procedural, technical or legal issues, nor can it be exclusively observed from that aspect. The scope and purpose of the warning may be considered only in the wider context of the employment termination consequences. Namely, a dismissal is directly and closely related to economic moments, to economic development in general and particularly to the problem and the policy of employment and vocational education and training, the freedom to work, the principle of the right to work, employment relationship stability, social justice and social peace (Pešić, 1966, p. 205). In domestic law over a long period of time coinciding with the development of socialism and worker self-management (up to the beginning of the 1990s and the period of transition), disciplinary proceedings were regulated by the law in detail. This was a traditional court procedure, an accusatory procedure since it was based on the principle of contradiction, i.e., the dispute; it included the stage of initiation, conduct of the proceedings, oral hearing, inviting the parties, the presence of authorized defence attorneys, defence of an accused employee, a two-level system of disciplinary bodies in charge of rendering decisions, the right to appeal etc. Following the adoption of the Labour Act in 2001.,[22] and subsequently of the Labor Law in 2005.,[23] the practice of "trial of disciplinary procedure" was abandoned; the procedure has become extremely liberal - no disciplinary procedure is foreseen to determine the breach of duty, i.e. to determine liability of an employee for his / her breach of duty. A certain "shortened procedure", "summary disciplinary procedure" has been introduced. Thus, The Labor Law, 2005 does not state disciplinary responsibility, disciplinary procedure, explicitly but indirectly - by regulating the employment termination procedure regarding the employee's liability for breach of duty, i.e. non-compliance with labour discipline and application of measures for their violation. In terms of the aforementioned, the procedural rules of the termination/disciplinary procedure are intended to provide the necessary guarantees, the protection of the employee against the unlawful conduct of the employer, i.e. the abuse of disciplinary powers [...] (Lubarda, 2012, p. 653). Although the purpose of the dismissal procedure is the protection of employees in the employment relationship, considering the connotation of Article 191, paragraph 7 a, and related to Article 180 of the Labor Law, it can be reasonably concluded that our legislator was not guided by such an idea and

[22] "Official gazzette of the Republic of Serbia", No. 70/2001, 73/2001.
[23] "Official gazzette of the Republic of Serbia", No. 24/2005, 61/2005.

had no such intention. Such resolution is neither supported by comparative practice nor by the postulates of rule of law. The form of private property cannot be the basis for the retroactive procedure for determining liability and limiting the right to defence and the right to an objection/appeal.

A warning may be considered to provide an opportunity for an employee (whose dismissal is being proposed) to respond (to defend himself/herself) to the facts related to conduct or breach of duty arising from the employment contract. A warning should be a kind of a reminder, "signal to an employee", "drawing the employee's attention" to the fact that persistence in misconduct shall result in dismissal, whereby the employer can leave an employee a deadline within which there will be no termination of an employment contract should the employee change his/her and there is no further breach of duty. Hence, a sort of second chance, a chance for showing remorse, unless the employer cannot be reasonably expected to do so (in case of gross misconduct). The purpose of warning in domestic law is to inform the employee of dismissal, a mere fulfilment of a formal requirement, rather than providing an opportunity for the employee to change his/her conduct, in case that according to circumstances the employer may be expected to signal the employee to change his/her conduct.

"Existing regulation resembles an individualistic and liberal laisser-faire doctrine. Namely, these are regulations based on private property as a source of responsibility and limited only by the right of others to the same kind of conduct. This responsibility is solely individual and individualistic, for itself and in itself; whereas social responsibility is activated exclusively in case of violating certain "rules of the game". Such responsibility is manifested only in acting according to prescribed rules of conduct and penalty for leaving the sphere of the ordered and allowed" (Đorđević, 1980, p. 71).

In other words, this is obedience based on hierarchy and totalitarian authority.

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