Termination of employment of lecturers with academic ranks

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Abstract. The present study elaborates on the issue of termination of employment of lecturers with academic ranks. The aim is to perform an up-to-date normative analysis of the grounds for termination in the two dedicated laws: the Act on Development of the Academic Staff in the Republic of Bulgaria and the Higher Education Act, as well as the general source, i.e. the Labour Code. The exploration is complemented by a review of the relevant case law. The methodology includes traditional methods of the legal doctrine – induction, deduction, comparative and normative analysis, etc. Conclusions and summaries on the application of the norms are made on the basis of the performed analysis. The termination pursuant to the special laws is in accordance with the goals and the spirit of the normative regulation of the higher education and the academic staff. In view of this, the grounds are consistent with the specifics of this activity and reflect both the traditions of Bulgarian education and the contemporary processes. In addition, the general grounds for termination under the Labour Code are applicable, insofar as the special laws do not provide otherwise.

Key words: lecturers with academic ranks, employment relations, termination, dismissal, retirement.

1. Introduction

The issue of labour relations of the members of the academic staff is important in view of the ongoing reform of the system of higher education and the need on the one hand to ensure a high level of educational service and quality of research, and in view of the competitiveness of Bulgarian scientists on the world market on the other hand. This determines the relevance of the question, as well as the need for a normative analysis of the grounds for termination in order to bring clarity to the matter, which is specific in relation to the general law.

The author has examined here the issues of termination of employment in relation to only one category of academic staff – the lecturers with academic ranks.

The purpose of this study is to analyse the relevant norms governing the employment of lecturers with academic ranks in the two specialized laws: the Act on Development of the Academic Staff in the Republic of Bulgaria (ADASRB) and the Higher Education Act, (HEA) as well as the general source – the Labour Code (LC). The case law relevant to the topic is also analysed, which gives both a theoretical and a practical view on the issue. Conclusions and summaries on the application of the norms are made on the basis of the performed analysis.

In order to achieve the set goal and the related exploration tasks, the author uses the traditional methods of legal research: induction, deduction, comparative law and normative analysis.

The exploration is in accordance with the current labour legislation as of 30 November 2021.

2. Substance of the termination of employment.

Termination of employment is a reverse act of its establishment. It terminates the employment for a future period and the employment relations between the parties. The termination of the employment of lecturers with academic ranks may take place only in the presence of the grounds explicitly provided for in Article 58 and Article 58a of HEA and ADASRB, possibly for cases that have not been settled under LC. In terms of their legal nature, these are legal facts that the legal norms relate to specific legal consequences in the objective reality. These facts can be legal actions or legal events, but regardless of their type, they are to occur at a later time after the establishment of the employment relationship. Where the ground for termination is a legal action, it presupposes the existence of one or several statements of intent made by the parties in that case.

In some legal cases, the grounds create only the right of the parties to terminate the employment. In other cases, the law establishes not only a right but also an obligation for the employer to terminate the legal relationship (e.g. when the employee is deprived by a sentence or following an administrative procedure of the right to practice a profession or to hold the position to which they are appointed). In cases where the ground is a legal event, the employment relationship is automatically terminated upon its occurrence of the event without

need for either party to state its intent (e.g. in the event of death of the worker or employee) (Andreeva&Yolova 2020).

Termination of employment is an issue of interest to the legal doctrine, as this institution not only affects the existence of individual employment relationships, but it directly affects both the employee, as a carrier of labour force, and the employer. The variety of issues encompassed by this topic has both theoretical and practical aspects, and this necessitates clear interpretation and appropriate application of the rules. This is the reason for the detailed clarification of the topic in the textbooks on labour law (Yanulov 1946) (Yanulov 1948) (Radoilski 1957) (Vassilev 1997) (Mrachkov 2010).

Along with this basic presentation of the matter, the legal theory is rich in many in-depth studies aimed at a detailed analysis of the individual aspects in the multifaceted issues of the grounds for termination. Prominent labor law specialists have worked in this field, such as Prof. Vasil Mrachkov (Mrachkov 1962) (Mrachkov 1966) (Mrachkov 1971) (Mrachkov 1994) (Mrachkov 2000) (Mrachkov 2004) (Mrachkov&Sredkova,&Vassilev 2009) (Mrachkov 2010), Prof. Kruger Milovanov (Milovanov 1967) (Milovanov 1968) (Milovanov 1976) (Milovanov 1989) (Milovanov 2008), Prof. Atanas Vassilev (Vassilev 1985), Prof. Emil Mingov (Mingov 1993) (Mingov 2003) (Mingov 2004), Nina Gevrenova (Gevrenova 2009), Ivaylo Staykov (Staykov 2003), Andrey Alexandrov (Alexandrov 2008) (Alexandrov 2011) (Alexandrov 2008) (Alexandrov 2014) (Alexandrov 2018) (Alexandrov 2019) and others.

The termination of the employment of lecturers with academic ranks is a matter of great importance. *On the one hand*, as in the classic employment relationship, the termination of which is regulated by the norms of the Labour Code, the termination discontinues prospectively the legal relationship between the employer – a university/research organization and the lecturers with academic ranks with all related consequences from an employment point of view. *On the other hand*, this termination is important for the higher school, which is associated with the activities it develops, namely the education provided in various educational degrees “Professional Bachelor”, “Bachelor”; "Master" and educational and research degree “Doctor of Science”, as well as the conducted research activity. These are consequences that require the termination to be approached very responsibly because the process is not planned and natural in all cases. It is the multi-layered consequences of termination that make the matter not only complex from a theoretical point of view but also posing multiple questions in practice.

The importance of these issues has been assessed by the legislator and it is therefore regulated in the provisions of the special regulations HEA and ADASRB. It is these sources that actually reflect the specifics of the employment relationship with the members of the academic staff, including the faculty with academic ranks, and taking those specifics into account the grounds for termination of the legal relationship are laid down, grounds that correspond to cases missing in other employment spheres.

1 Grounds under the special regulations (HEA and ADASRB)

The grounds for termination of employment of lecturers with academic ranks are contained in the provisions of two sources - HEA and ADASRB. *Firstly*, both chronologically, in view of its adoption and in view of its place in the system of sources related to the regulation of higher education, the grounds set out in the HEA should be analysed. The regulation is contained in *Chapter Six. Academic composition of higher schools*[2], Article 58 and Article 58a.

Secondly, the legislator has detailed the regulations related to the grounds for termination also in the special *ADASRB - Article 35 and Article 36.*

The two normative acts serve as a source regarding the grounds for termination, and what is specific in this case is that the grounds are supplemented and detailed without being mutually exclusive, and the cases that are not covered are resolved on the grounds for termination laid down in the LC.

Summarizing the system of provisions in the order and the procedure for introduction of the grounds for termination, we can draw three acts that may be classified into two groups of sources:

- Special, relevant only to employment relations with members of the academic staff - HEA, ADASRB and
- General, relevant to all employment relations – Labour Code.

What the two groups have in common is that the legislator has regulated the matter only in acts at the level of laws. This is appropriate given the importance of the matter, the ending of the employment relationship and the related consequences, and even more so the relevance of higher education to a specific type of socially significant activity that takes place under the control of the state.

The grounds *in the mentioned sources from the first group* are regulated with regard to the entire academic staff of the higher schools. For the needs of this study and considering the subject of the analysis, the

grounds noted in a complex normative analysis will be considered only in relation to the lecturers with academic ranks - associate professors and professors.

According to the provision of *Article 54 of HEA* these positions are held under an employment contract for an indefinite period of time. The contract is concluded on the grounds of Article 67, paragraph 1, item 1 of the Labour Code and in view of the interpretative provision of §4e, item 1 of the Additional Provisions of HEA it is a basic employment contract. It can be summarized that the employment relationships of lecturers with academic ranks are concluded on the basis of a basic and open-ended employment contract with the respective higher school. This is important in clarifying the grounds for termination.

The HEA uses the term “dismissal”. In its essence, this fact leads to termination of employment. At the same time, however, the legislator has not used arbitrarily a term that differs from the term in the LC. In the provisions of Article 327, Article 328 et seq. of the LC the term is “terminated”. This terminological difference comes to show the order of termination. In the general context of the grounds for termination applicable to all employees and regulated in the Labour Code, the term is “termination” to ensure the largest possible scope. It combines different types of grounds. As far as the employment relationship with lecturers with academic ranks arises as a result of a complex set of conditions including labour law elements and takes place in compliance with an administrative procedure under the ADASRB. This requires the dismissal to be performed under the cases of HEA and ADASRB by the rector who issues an order as an employer. It is the term “dismissal” that embodies the administrative aspect when the employment relationship between a lecturer with an academic rank and a higher institution is terminated. *The members of the academic staff are dismissed by order of the rector (Article 58, paragraph 1 of the HEA).*

Eight different cases are set out by the provision of Article 58, paragraph 1 of HEA, and they are heterogeneous in nature.

- *The first ground* (Article 58, paragraph 1, item 1 of HEA) – “at their request” gives the persons right to submit a request to the rector.

This is a right of the individuals and reflects the freedom in the right to work and the equality of the parties under the employment relationship. A comparison can be made on this basis with the general termination procedure under the Labour Code, that is the unilateral termination by the employee with prior notice - Article 326. In that specific case, given the lack of special arrangements to implement the request, the procedure is to be supplemented by applying the general provisions of the LC. It should be borne in mind that the lack of detail in HEA is also due to the academic autonomy granted to higher education institutions. They may lay down provisions in their regulations to guarantee the smooth running of the educational process and to bind them in this regard with the terms for termination of the employment relationship at the request of the lecturer with an academic rank in compliance with the requirements of the Labour Code regarding the mandatory maximum notice.

- *The second ground for termination,* laid down in Article 58, paragraph 1, item 2 of HEA is „in case of conviction for a premeditated crime“.

This ground is in a completely different category than the previous one. Unlike the previous one, here the rector issues the order for dismissal of the lecturer with an academic rank referring to a conviction handed down by a court whereby the person was found guilty of committing a crime under the Penal Code and sentenced to imprisonment. In comparative terms, an analogy can be made with the termination of the employment relationship under the Labour Code on the grounds of Article 330, paragraph 1. The employer may terminate the employment contract without notice when the employee is detained for the execution of a sentence.

The similarity in both cases consists in the existence of grounds for termination related to an effective sentence for a committed crime. In the general case under the Labour Code, this ground refers to the group of grounds on which the employer may terminate the employment relationship without giving notice to the employee. This text allows for discretion given the use of the term “may”. At the same time, on the basis of Article 330, paragraph 2 the employer terminates an employment contract without notice where:

1. (repealed, previous item 2 – State Gazette 100/1992) an employee has been divested by sentence of the court or by an administrative order of the right to practice a profession or to occupy the position to which he has been appointed. On this basis, the employer has no discretion, given the fact that the penalty imposed on the employee is directly related to the employee’s work which is the subject of the employment relationship.

Similar to this provision is the obligation of the rector of the higher school arising from HEA to terminate the employment. In both cases, the employer is not given right to discretion as the legislator has decided to protect more significant values for the benefit of society. In particular, taking into account the fact of an effective sentence.

The difference is in the type of the imposed punishment, according to the Labour Code this is divestment of the right to exercise a profession or to hold the position to which the employee is appointed. While under the HEA the penalty is imprisonment for an intentional crime.

By analogy with the opposite it can be concluded that where a lecturer with an academic rank is convicted of a crime of negligence or imposed a punishment other than those related to imprisonment (life imprisonment with and without the right to exchange), the employment relationship is not terminated.

- *The third ground for termination* under Article 58, paragraph 1, item 3 of HEA envisages “where no conditions can be provided for them to carry out teaching and no opportunities exist for transfer or retraining in a similar subject at a decision of the Board of the primary unit and/or affiliate”. This provision requires the cumulative presence of the following conditions 1. impossibility to carry out the teaching activity; 2. there are no opportunities for transfer or retraining in a related scientific discipline and 3. there is a decision of the Board of the specific scientific unit. The absence of any of these preconditions leads to the impossibility to terminate the employment relationship on this ground.
- *The fourth ground for termination* – Article 58, paragraph 1, item 4 of HEA exists where there is proven plagiarism in academic works.

When this ground has been laid down, the legislator has not specified the order in which plagiarism should be established, nor the act with which the authority has ruled on the existence of plagiarism. In this case it should be interpreted broadly, and the rector may refer to this ground also in the cases of a crime under the Penal Code and where a sentence has entered into force, as well as in case of plagiarism established following the administrative procedure.

- *The fourth ground for termination - Article 58, paragraph 1, item 5 of HEA in conjunction with Article 35, paragraph 1 of ADASRB* – in case of withdrawal of the academic degree. Withdrawal of a scientific degree can take place in the presence of one of the following two hypotheses - when it is established that the works or a significant part of them, on the basis of which a scientific degree or an academic position have been obtained, have been written or created by another person or when in his/her capacity of a member of the

panel or of a faculty/scientific panel he/she has given an opinion resulting from a committed crime, established with an enforced verdict. The withdrawal of the scientific degree and the dismissal from office are carried out by the rector of the higher school, respectively by the head of the scientific organization, as proposed by the faculty/scientific council.

- *The next ground for termination of employment of a lecturer with an academic rank is specified in Article 58, paragraph 1, item 6 of HEA* – that is in case of two consecutive negative attestations.
- *The next ground for termination of employment is under Article 58, paragraph 1, item 7 of HEA* – in case of violations punishable by disciplinary dismissal.
- *Article 58, paragraph 1, item 8 of HEA* provides for the termination of an employment relationship in the event of legal disability.

The lecturers dismissed under paragraph 1, item 3 receive compensation equivalent to their remuneration until their employment contract expires, but not for a period longer than 12 months after their dismissal.

The case law concerning the grounds for termination against members of the academic staff is not rich. At the same time, however, it is an important basis for the application of the texts by the universities as employers. In this regard, the more important court decisions will be presented.

The case law provides analyses of the ratio between the special grounds under the HEA and general grounds under the LC[3]. The question is of theoretical and practical interest. *Lex specialis derogat generali (from Latin: the special law cancels (replaces) the general law, and* this principle is reduced to the cases of competition between legal norms of the *general* (generalis) and the *special* (specialis) law, in which case the latter take precedence over the former including in case of interpretation of law. In this case, however, the special-general law relationship goes beyond this general statement of principle, and should be seen not so much as “exclusion” but rather as a priority of application.

According to the cited court decision, “The special grounds for dismissal of lecturers in higher education under the Higher Education Act do not exclude the general grounds for termination of employment under the Labour Code, when they have come into existence. The employment of researchers under the Labour Code is terminated by order of the head of the scientific organization after the Scientific Council has taken a decision for their dismissal. The decision on the dismissal may also be taken by the Academic Council which reviews the decision of the Faculty Council on the same issue.”

Unfortunately, the case law is not unambiguous with regard to the ratio of grounds for termination. As can be seen from Decision № 1725/7.01.2004 of the Supreme Court of Cassation on civil case № 1032/2002, 3rd civil chamber, Rapporteur Judge Tsenka Georgieva, the court upheld that “with regard to the lecturers in higher

[3] *Decision № 190/13.02.2001 of the Supreme Court of Cassation under civil case № 1205/2000, III civil chamber, rapporteur Tsenka Georgieva*

education institutions the Labour Code is applicable only to issues not regulated in the Higher Education Act. The decrease of lecturing work is provided as a ground for dismissal in the special law, therefore the employment relationship cannot be terminated due to “reduction of the volume of work” under the Labour Code".

In summary, we believe that a conclusion can be made about the content and system of grounds for termination, which is subordinated to the idea of supplementation – the grounds under HEA are applied with priority and given the regulation of a specific type of public relations, but this does not preclude the application of grounds for termination under the general normative act – the Labour Code. In this respect and in addition we consider that there is no direct contradiction with the cited case law. What is stated in Decision № 1725/7.01.2004 of the Supreme Court of Cassation concerns only hypotheses in which there is “overlapping of the essence of the grounds for termination”. As a result, the system of grounds for termination includes the grounds under the special and the general normative acts, excluding from the range of grounds the general cases, which are regulated in HEA in a way that reflects the specifics of the members of the academic staff.

In ADASRB, the grounds for dismissal from an academic position are set out in Chapter Four Control, in the provision of Article 35. This regulation is related exclusively to the goals and spirit of the special law, which focuses on the development of academic positions in the aspect of their scientific activity and is applicable when it comes to dismissal from academic positions in the case under Article 35, paragraph 3 of the Act on Development of the Academic Staff in the Republic of Bulgaria. This dismissal from an academic position and termination of the employment contract concluded with a person as a lecturer holding an academic rank, in which case the person can no longer hold an academic position, is within the limits of violations strictly defined by law - due to breach of the person’s duties as a scientist. In order to comply with the law, it is provided that a proposal and consent of the competent body for scientific issues – a scientific council - is required only in case of violations related to the scientific activity[4].

Given the systematic place of the regulations, *it can be concluded* that the aim of the legislator was not a detailed and comprehensive regulation of the grounds for termination. In this sense, the norm does not claim to be exhaustive. The grounds for termination are a natural continuation of the different types of the control over the activity of the lecturing staff and in particular the lecturers holding academic ranks and thus it is the most severe consequence of improper conduct and/or poor performance of employment obligations. In view of this, the provision does not contain grounds that are substantially different from those in HEA. Similarly, these grounds have already been mentioned by the legislator in Article 58.

This legislative approach is not common and presupposes heterogeneous practice in autonomous universities. At the same time, we cannot say that it is wrong because of the different goals that these norms pursue.

The grounds for dismissal under Article 35 of the ADASRB are the following:

- when plagiarism or lack of credibility in the scientific data submitted in the scientific papers is proven in accordance with the law, on the basis of which that person has acquired or participated in a procedure for obtaining a scientific degree, or has taken up or participated in a competition for an academic position. Case law contains several acts – court decisions and rulings that concern various aspects of this ground for termination and were issued on the occasion of appealed termination of employment of persons at different levels of the academic hierarchy. They can also be applied to lecturers holding academic ranks so they are used in this study. It is assumed that an effective sentence does not have to be in place in order to assume presence of “plagiarism”.
- An effective sentence does not have to be in place in order to assume presence of “plagiarism”. Not every incorrect citation /plagiarism/ is a crime[5]. Thus Article 173 of the Penal Code states that a crime occurs when another person’s work of science, literature or art or a significant part of such a work is published or used under one’s own name or under a pseudonym. That is, the person may have not used a significant part of another person’s work, but only individual sentences or paragraphs, and this is important in determining their scientific contribution when participating in a procedure for award of an academic degree or when checking the conditions for withdrawing their academic rank.
- A person who, as a member of a jury or a faculty/scientific council, has given an opinion as a result of a crime committed by them, established by an effective sentence[6].

[4] Decision № 774/11.05.2018 of Ruse Regional Court under civil case № 6718/2016.

[5] Decision № 6616/2.10.2013 of Sofia City under appeal civil case № 6653/2013.

[6] In its original wording, the rule was declared unconstitutional by the Constitutional Court of the Republic of Bulgaria – SG, issue 81/2010; new, issue 101/2010. 2. who has defended a dissertation or has been elected to an academic position in a procedure where a member of a jury or a faculty/scientific council has given an opinion as a result of a crime established by an effective sentence. Paragrafph 4, second sentence was declared unconstitutional with the same decision of the Constitutional Court. The Minister of Education, Youth and Science or the affected party has the right to appeal the revocation before the Arbitration Council within 30 days. It shall issue a final decision within one month.

- A person who has received a negative assessment in two successive attestations[7].

In the cases under paragraph 1, item 1 of ADASRB, the scientific degree obtained under this law, to which the violation is related, shall also be withdrawn. The revocation of a scientific degree and the dismissal is carried out by the Rector of the higher school following the procedure of HEA and the regulations of the higher school, respectively by the head of the scientific organization pursuant to the procedure set out in the regulations of the respective organization[8]. “According to Article 35, paragraph 3 of the ADASRB, the revocation of a scientific degree and the dismissal is carried out by the rector of the higher school, respectively by the head of the scientific organization, at the proposal of the faculty/scientific council”, and the grounds for termination of employment of a lecturer holding an academic rank are provided in Article 35, paragraph 3 of ADASRB and there is no possibility to introduce new and additional grounds, for example with the regulations of the higher school[9].

Upon dismissal from academic office under Article 35, paragraph 1, items 1 and 2 of ADASRB and revocation of a scientific degree under Article 35, paragraph 2 of ADASRB, all personal rights arising from the academic degree and academic position are considered revoked.”

We find that the provisions of the special laws - the Higher Education Act and the Act on Development of the Academic Staff in the Republic of Bulgaria are to be observed in the cases where the employment relationship with a lecturer with an academic rank is terminated. Even if the lecturer with an academic rank works under an employment contract (including for additional work if they hold an academic position under this contract – “Associate Professor, Higher School”) the termination of employment is to take place only on the grounds provided in the Higher Education Act /HEA/ and in the Act on Development of the Academic Staff in the Republic of Bulgaria /ADASRB/. These laws are special in relation to the Labour Code and lay down specific grounds for dismissal of employees holding academic positions.

According to Article 15, paragraph 2 of ADASRB, an academic position is occupied under an employment contract, but the grounds for termination of that employment contract are regulated in Article 35 of the same law, not in the Labour Code[10]. When the two special laws – ADASRB and HEA – are applied their relationship should also be taken into account. The author argues that the former has primacy over the latter. This conclusion arranges the grounds for termination at several levels of regulation – first come the grounds in ADASRB, then in HEA and lastly the grounds in the Labour Code, as far as Article 59 of HEA states that the Labour Code applies to outstanding cases.

3. Termination grounds under the Labour Code.

The grounds for termination of an employment contract with a lecturer with an academic rank provided by the general law are to be considered next. The provision of Article 330 of the Labour Code (amended, SG No. 100/1992) - Termination of Employment Contract by Employer Without Notice – introduces two separate hypotheses where the employer terminates the employment contract with an employee. The grammatical interpretation of the two separate paragraphs of Article 330, paragraphs 1 and 2 of the Labour Code concludes that the verb “may” is used in the first paragraph, while in the second paragraph uses the verb “shall”. That is, the discretionary right of the employer to terminate the employment contract with an employee under paragraph 1 of Article 330 is an option but an obligation under paragraph 2. The second paragraph provides exactly 9 hypotheses where an employment contract is terminated without notice – listed exhaustively from item 1 - item 9. Relevant to this study is the provision of Article 330, paragraph 2, item 2 of the LC. This ground, as indicated in the Commentary to the Labour Code, applies only to employees who hold scientific positions in higher education institutions (universities, academies, etc.) and research institutes. At the time of issue of the

[7] Decision of 11.04.2014 of Sofia Regional Court under civil case № 7634/2013; Decision № 7172/24.10.2019 of Sofia City Court under appeal civil case № 15313/2018; Decision № 8749/14.11.2016 of Blagoevgrad Regional Court under civil case № 1320/2016; Order № 446/4.12.2018 of the Supreme Court of Cassation under № 1371/2018.

[8] In this regard see case law Order № 765 /6.11.2017 of the Supreme Court of Cassation under civil case № 1925/2017, III civil chamber, Civil College, rapporteur Judge Dragomir Dragnev; Decision of 11.04.2014 of Sofia Regional Court under civil case № 7634/2013 Decision № 446 /19.01.2017 of Veliko Tarnovo Administrative Court under administrative case № 390/2016; Decision № 543 /2.05.2019 of Varna District Court under appeal civil case № 545/2019; Decision № 774 /11.05.2018 of Ruse Regional Court under civil case № 6718/2016; Decision № 1027 /3.02.2017 of Sofia City Court under appeal civil case № 401/2016; Decision № 1867 /18.03.2016 of Sofia Administrative Court under administrative case № 322/2016; Decision № 6616 /2.10.2013 of Sofia City Court under appeal civil case № 6653/2013; Decision № 7172 /24.10.2019 of Sofia City Court under appeal civil case № 15313/2018; Decision of 23.11.2015 на CPC under civil case № 60780/2014; Decision № 3733/10.05.2016 of Sofia City Court under appeal civil case № 3707/2016 г.

[9] Decision of 11.04.2014 of Sofia Regional Court under civil case № 7634/2013.

[10] Decision of 23.11.2015 of Sofia Regional Court under civil case № 60780/2014.

Commentary of the Labour Code, it was emphasized on page 968 that the following scientific titles exist according to the Higher Education Act: for higher education institutions – “assistant”, “associate professor” and “professor”.

According to the Commentary of the Labour Code, these scientific titles coincide with the positions that these employees hold during their employment, and in order to hold a scientific position, the person must have acquired the relevant scientific title after a scientific competition conducted under the Act on Scientific Titles and Scientific Degrees (ASTSD). The scientific degrees in ASTSD and § 19 HEA are two: “Doctor” and “Doctor of Science”, and they are acquired in accordance with Article 4, ASTSD, with a successfully defended dissertation. While the acquisition of a scientific title is a prerequisite for the relevant scientific position, according to the Commentary of the Labour Code, this is not the case with the scientific degree, which is rather a condition for acquiring scientific knowledge for an academic rank: research and scientific degree “Doctor” for scientific knowledge, “associate professor” and “Senior Research Fellow II degree” (Article 10, ASTSD) and scientific degree “Doctor of Science” for the scientific titles of “Professor” and “Senior Research Fellow I degree” (Articles 13-14, ASTSD). It turns out that this condition is not absolute, because it can be overcome by presenting the so-called habilitation thesis, which has the characteristics of a Doctor’s or Doctor of Science dissertation work (Article 12 and Article 15 of the ASTSD). Therefore, employments contract with researchers such as associate professors and professors, senior research fellows II and I degree can be concluded under the current legislation without the relevant scientific degree. According to the Comment of the Labour Code, the grounds for dismissal in these cases is the withdrawal of the relevant scientific title or degree, that is the divestment of the respective researcher of the acquired scientific title or degree. The procedure and the grounds are therefore referred to in Article 30 and Article 31 of ASTSD. With the revocation of the scientific title, the grounds for holding the respective position also disappear[11].

The provision of Article 330, paragraph 2, item 2 of the Labour Code thus transfers the consequences ensuing from ASTSD and ADASRB to the sphere of the employment relationship and creates unity between the two laws, and the termination of the employment contract in these cases is mandatory and the employer is to dismiss the researcher from the occupied scientific position.

Thus, the main features of the possibility or obligation of the employer under Article 330 of the Labour Code to terminate an employment relationship with an employee holding a scientific position in a university without prior notice in any of the 10 cases listed under Article 330 of the Labour Code should be consistent with the fact that the Act on Scientific Degrees and Scientific Titles was repealed on 25.05.2010. Despite the repealing of that legal act the principles laid down in the Commentary to the Labour Code serve as basis for this decision, i.e. there is no other theoretical basis for the court to take into account in order to reach objective legal conclusions.

The current substantive legal basis, which is to be taken into account when terminating an employment contract with a lecturer holding an academic degree, is contained in the following main normative acts outside the Labour Code, namely: Administration Act (promulgated in SG 130/5.11.1998, last amended SG 7/19.01.2018); Higher Education Act (promulgated in SG No. 112/27.12.1995 - last amended and supplemented, SG No. 98/27.11.2018, effective from 27.11.2018) and the Act on Development of the Academic Staff in the Republic of Bulgaria (promulgated in SG No. 38/21.05.2010, last amended and supplemented, SG No. 30/3.04.2018, effective from 4.05.2018)

One of the classic reasons for termination of employment is the retirement of individuals. The ground is regulated in the provision of Article 328, paragraph 1, item 10 of Labour Code[12]. It applies to the group of grounds for termination at the initiative of one of the parties with notice, in this case at the initiative of the employer.

This provision raises a number of issues in comparative terms. When comparing the regime introduced by this norm, only and solely in relation to the lecturers with academic ranks – professors, associate professors and doctors of science – with the general regime for workers and employees, a question arises as to the purpose of this ground and whether it introduces discrimination. Before its amendment with § 16 of the Act Amending and Supplementing the Labour Code (promulgated in SG 7/2012) the same provision granted the employer the right to terminate the employment contract with the employee with a notice when the employee acquired right to a pension for length of service and age. Following this amendment of the legislation, the circle of persons falling

[11] Decision № 749 /22.02.2019 of Varna Regional Court under civil case № 18698/2018.

[12] Article 328. (1) Any employer may terminate a contract of employment by giving a notice in writing to the employee in observance of the terms of Article 326, paragraph 2 in the following cases: item 10. (amended – SG 2/1996, supplemented, issue 28/1996, amended, issue 25/2001, issue 101/2010, issue 7/2012, issue 54/2015, in force as of 17.07.2015) when professors, associate professors and doctors of science when acquiring the right to pension for security length of service and age, when reaching 65 years of age, apart from the cases of § 11 of the transitional and final provisions of the Higher Education Act.

within the scope of this provision is narrowed, excluding the general category of workers and employees and the norm applies only to members of the academic staff, but not even to all of them, but to an exhaustive list – professors, associate professors and doctors of science. The legislator provides a possibility under § 11 of the transitional and final provisions of the Higher Education Act to extend employment contracts for up to three years by proposal of the chair board and the board of the primary unit and/or the affiliate, after a decision of the academic board[13].

In this regard, a question arises why the legislator introduces a different policy towards those employed under an employment contract. The European legislation has laid down provisions in Article 6, § 1, paragraph 1 of Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation „Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.”

With this norm, the European legislation grants the taking of decision, respectively the responsibility, but also the freedom to the member states to set their national policy on this basis. The Bulgarian legislator, taking into account the social policy and employment policy followed in the country, may introduce regulations in its domestic labour law to promote youth employment. In this case, however, the Bulgarian legislator has taken a decision that shows a „lack of a clear legislative concept regarding the termination of employment upon retirement. This has raised many questions when introducing the amendment (Alexandrov 2013) (Alexandrov 2021).”

Compared to the general category of workers and employees under the current regulations after the amendments to the Labour Code from 2012, employers have no right to terminate employment with notice when workers and employees acquire the right to a pension for length of service and age[14]. It is noteworthy here that the employer’s right to discretion, as the employer had under the previous legislative decision, is taken away. This right is reserved only in respect to lecturers with academic ranks. The Labour Code does not completely abandon the idea of the employer’s discretion to preserve the employment relationship after the employee has reached reaching a certain age. As mentioned above, this regime applies to a relatively limited circle of people: *associate professors and professors in higher schools and research organizations, as well as persons who have obtained the degree of „Doctor of Science”* under the Act on Development of the Academic Staff in the Republic of Bulgaria, and in the latter case the scientific position occupied at the higher school or research institute does not matter (Sredkova 2011). In Article 328, paragraph 1, item 10 of the Labour Code the legislator uses a blanket legal norm, which refers to §11 of the transitional and final provisions of the Higher Education Act. Structured in this way the ground for termination under Article 328, paragraph 1, item 10 of the LC is one of obsurest from practical point of view and is respectively debatable in legal theory. We share the opinion of Prof. V. Mrachkov „*this creates contradictions in domestic law – between persons with scientific titles and doctors of science in higher education and the other employees under the Labour Code, and with persons with the same academic positions and scientific titles in academic institutes of the Bulgarian Academy of Sciences and the Agricultural Academy, etc., to which the exception under § 11 of the Transitional and Final Provisions of HEA does not apply*.” (Mrachkov 2012)

It is no coincidence that the issue is debatable in view of the discriminatory nature of the provision. Apart from legal theory (Alexandrov 2013) (Alexandrov 2021), it is also subject to judicial review, given its referral to the Court of Justice of the European Union on a reference for a preliminary ruling in Joined Cases C-250/09 and C-268/09 Georgiev. The Court considers that „The University and the Bulgarian Government do not clearly specify the aim of that national legislation and, in essence, merely state that it pursues the type of aim referred to in Article 6(1) of Directive 2000/78”. It still accepts „*the age of 68 years is five years higher than the statutory age at which men may normally acquire the right to a pension and be made to take retirement in the Member State concerned. It therefore allows university professors, who are offered the opportunity to work until 68, to pursue their careers for a relatively long period. Such a measure cannot be regarded as unduly prejudicing the legitimate claims of workers because the relevant legislation is not based only on a specific age, but also takes account of the fact and circumstance that the persons concerned are entitled to financial compensation by way of*

[13] **§ 11** (1) By proposal of the chair board and the board of the primary unit and/or the affiliate, after a decision of the academic board the employment contracts with lecturers with academic ranks when they reach 65 years of age under Article 328, paragraph 1, item 10 of the Labour Code may be extended for a period of up to three years.
(2) The extension of the employment relations with the lecturers with academic ranks under para. 1 shall be settled by a fixed-term employment contract.

[14] See http://www.mlsp.government.bg/bg/faq/faq.asp?qid=43653

a retirement pension at the end of their working life. In view of this, it can be concluded that the Court considers the measure to be non-discriminatory.

In this case it can be concluded that the Bulgarian legislator has set the text only for the members of the academic staff in the Republic of Bulgaria in order to take into account the interest and aspirations of young people to develop in the sphere of science, respectively to grow in the academic hierarchy. Higher education institutions have the right to terminate the employment relationship with a person holding the position of „associate professor” or „professor” when the persona reaches the age of 65. At the same time, there is the right of discretion to keep the employment relationship with the lecturer wtih an academic rank but already under the conditions of a fixed-term employment contract. In this respect, it may be asked whether the special HEA introduces restrictive rules regarding the general regime of the LC?

We believe that the special law sets the term precisely in order to achieve the general goal of stimulating young people to strive for academic growth and at the same time to retain the valuable scientific staff with academic ranks who have reached the age of 65. In our opinion, however, given the relevance of the norm only to members of the academic staff, we believe that it should be regulated in a special normative act HEA.

In a retrospective analysis with previous legislative decisions it can be concluded that the age limit (with a different range) was laid down as early as the first laws in the Kingdom of Bulgaria, which marked the beginning of the development of legislation. According to Article 332 of the Public Education Act of 1909. “A teacher who has reached the age of 65 can be dismissed directly by the Ministry of National Education.” The same age is provided in the norm of Article 14 of the Act on the State Higher School of Financial and Administrative Sciences – Sofia of 1940, stating “The age limit for full-time teachers is 65 years”.

The lowest age for dismissal of lecturers with academic ranks is provided in Article 32 of the Higher School of Physical Education Act of 1942[15].

The age provided for in the Higher Technical School Act of 1941 is higher – Article 43.

During the socialist period of development of higher education Article 21 of HEA provided that “members of the scientific and lecturing staff shall be dismissed in the following cases: (c) when they reach the age of 60 and professors - at the age of 65[16].

Academicians (full academy members) and corresponding members (not full academy members) of the Bulgarian Academy of Sciences, who are Bulgarian citizens, regardless of their place of work and full-time position, as long as it is on the territory of the country and is related to scientific and creative activities or to training of scientific and creative staff, can work until the age of 70.

Decision № 1725/7.01.2004 of the Supreme Court of Cassation on civil case № 1032/2002, 3rd civil chamber, rapporteur Judge Tsenka Georgieva

With regard to the lecturers in higher education institutions, the Labour Code applies only to issues that are not regulated in the Higher Education Act. The reduction of teaching work is considered as a ground for dismissal in the special law, so the employment relationship cannot be terminated due to “reduction of the volume of work” under the Labour Code.

In conclusion, it can be concluded that age, as a ground for dismissal, has always been part of the ground for terminating the employment of lecturers with an academic rank with a higher education institution. In some periods it served as an absolute ground without the employer having a right to discretion, and in others it was a right of the employer with a possibility to keep the employee for teaching and research work for a certain period after the person has reached the age mentioned in the provision.

4. Conclusion

The following conclusions can be made on the basis of the conducted research concerning the termination grounds of the employment of lecturers with academic ranks according to the current legislation:

- The termination pursuant to the special laws is in accordance with the goals and the spirit of the normative regulation of the higher education and the academic staff. In view of this, the grounds are consistent with the specifics of this activity and reflect both the traditions of Bulgarian education and the contemporary processes.
- In addition, the general grounds for termination under the Labour Code are applicable, insofar as the special laws do not provide otherwise.

[15] „Ordinary professors are dismissed when they turn 60, and associate professors, ordinary and private associate professors - 55 years, both retaining all rights to do research work at the school“

[16] Decision № 1457/20.09.2002 of the Supreme Court of Cassation under civil case № 717/2002, III civil chamber, rapporteur Tanya Mitova, Chairman of the chamber.

Literature

Alexandrov, A., (2008), Termination of the labour or service legal relationship in case of impossibility of the person to receive access to qualified information (in Bulgarian), *Work and Law № 7,* pp. 18–23

Alexandrov, A., (2011), Termination of the employment agreement in case of lack of abilities for effective performance of the work (in Bulgarian), Work and Law № 12, pp. 18–24.

Alexandrov, A., (2013), Is the current regulation on termination of employment and service in case of retirement discriminatory? (in Bulgarian), *Work and Law № 10*, pp. 12–20

Alexandrov, A., (2014), One sided termination of the employment agreement with football player professional (in Bulgarian), *Contemporary Law № 2,* pp. 36–54

Alexandrov, A., (2018), Termination of the employment agreement due to conclusion of management agreement (in Bulgarian), *Science works of the Institute for state and law T. 17*, Sofia, BSA, pp. 96–119

Alexandrov, A., (2019), Termination of the employment agreement upon mutual agreement and initiated by the employer against agreed compensation (in Bulgarian), *Proceedings in in honor of the 70th anniversary of Prof. Dr. Emil Konstantinov*, ISL BSA, Sofia, pp. 485–502

Alexandrov, A.,. (2021), Legal problems, related to the termination of the employment legal relationship with habilitated persons after completing the age of 65 (in Bulgarian), *Work and Law № 3*, pp. 8–16

Andreeva, A.&Yolova, G., (2020). Labour and social security law (in Bulgarian), *Science and economics*, Varna

Gevrenova, N., (2009), The moment of realization of the preliminary protection in case of dismissal (in Bulgarian), *Actual Problems of the Labour and Social Security Law T. III.* Sofia, St. “Kl. Ohridski”, pp. 172-188.

Milovanov, Kr., (1967), Disciplinary dismissal (in Bulgarian)

Milovanov, Kr., (1968), Termination of the employment contract by the worker or employee (in Bulgarian), *Izvestia Institute for Legal Sciences, BSA*, XIII, pp. 181-254;

Milovanov, Kr., (1976), Labour legal relationship on the base of election (in Bulgarian), BSA, Sofia, pp. 88-96, 98-105

Milovanov, Kr., (1989), Termination of the employment agreement (in Bulgarian)

Milovanov, Kr.,. (2008) Employment agreement. Conclusion, amendment, termination. (in Bulgarian), *Work and Law*, pp. 181- 447

Mingov, Em., (1993), The specific one in the general grounds for termination of the employment contract (in Bulgarian), *Law №2*

Mingov, Em., (2003), The general grounds for termination of the employment contract (in Bulgarian), *Anniversary collection in memory of Prof. Vitali Tadjer, Sibi, Sofia*, pp. 304-327

Mingov, Em., (2004), Termination of the employment contract due to general grounds (in Bulgarian), *Sibi, Sofia*

Mrachkov, V. (1962), Termination of fixed term employment contracts (in Bulgarian), *Socialists Law №3*.

Mrachkov, V.&Sredkova, Kr&Vassilev, At., (2009), Comment of the labour code (in Bulgarian) 10th Edd., Sibi, pp. 892- 1034

Mrachkov, V.&Sredkova, Kr&Vassilev, At., (2012), Comment of the labour code (in Bulgarian)11th Edd., Sibi, pp. 997

Mrachkov, V., (1966), Dismissal without liability grounds (in Bulgarian), Sofia

Mrachkov, V., (1971), Legal protection in case of illegal dismissal (in Bulgarian), BSA, Sofia

Mrachkov, V., (1994), Extending the freedom of dismissal without notice (in Bulgarian), *Legal thought №2*

Mrachkov, V., (2000) Directive of the EU for mass dismissals (in Bulgarian), *Administrative justice №3.*

Mrachkov, V., (2004), The amendments in the Labour code and the approximation of the Bulgarian labor legislation with the international norms (in Bulgarian)*, Juridical world №2.*

Mrachkov, V., (2010), The contract in the labour law (in Bulgarian). *Sibi, Sofia*, pp. 133-135

Mrachkov, V., (2010). Labour Law (in Bulgarian)7th Edd., pp. 544-672

Radoilski, L., (1957). Labour Law of the Republic of Bulgaria, pp. 540-584;

Sredkova, Kr., (2011), Labour law. Special part. Part I – Individual labour law (in Bulgarian), Sofia, St. “Kl. Ohridski”, pp. 449

Staykov, Iv., (2003), Discrimination in termination of the employment legal relationship (in Bulgarian), *Contemporary Law №6*, pp. 16-32

Vassilev, At. (1997), Labour Law (in Bulgarian), pp.474-529;

Vassilev, At., (1985), Termination of the employment relationship by the enterprise without notice (in Bulgarian), Lectures for post graduate qualification for jurists by the system of peoples councils, Sofia University, Legal Faculty, T. XXVI, pp. 211-238

Yanulov. Il., (1946). Labour Law and social legislation (in Bulgarian) Part 1. *State higher school for financial and administrative sciences*, Sofia, pp. 287-315

Yanulov. Il., (1948). Labour Law (in Bulgarian) 2nd Edd. pp. 238-261, 262-269