Summaries:

Book

Essential components of the Individual Employment Contract

The book examines the components of the individual employment contract since the most fundamental labour rights and obligations are found in them, and both employer and employee cannot conclude such contract without negotiating these first. The book identifies three must-have features of the essential components: **firstly**, the legislator explicitly states which of the many rights and obligations get to become part of the components as they characterize the subject of the employment contract. **Secondly**, parties must agree on each element of the essential components, should they wish to conclude an employment contract and establish legal relations. It is important to note that the legislator not only obliges, but also guarantees that, if all elements of the essential components are agreed upon, employee and employer will enter into an employment contract and establish legal relations. That is why their freedom to contract is realized in its entirety and determines both the content of the most important rights and obligations, and the occurrence of the employment contract as a basis for the formation of legal relations. **Thirdly**, if parties do not agree on all the elements of the essential components, they do not enter into an employment contract and do not form an employment relationship. The legislator guarantees that if they do not agree on the necessary content, employee and employer will not enter into an employment contract and no labour relations will form between them. Substantiated conclusions are made that the essential components elevate contractual freedom to a level that is new and different from its other manifestations, giving it the strength and ability not only to determine the most important rights and obligations, but the occurrence itself of the employment contract as a basis for the formation of labour relations. Therefore, the parties must possess not just "whatever" freedom of bargaining they can, but one that lets them cause the legal consequences specific to the essential components of the contract.

The book analyzes the prerequisites, the cumulative existence of which would ensure that negotiating the essential components of the employment contract will cause its uniquely inherent consequences. **Firstly**, the Labour Code should contain an explicit provision in the sense that if parties do not agree on the essential components, they shall not conclude an employment contract, unless there is a provision to replace the missing clause. **Secondly**, the

legislator should not regulate the elements he includes in the essential components, because only the legal void ensures that negotiating them is to cause the required consequences. It is consistently argued that lack of agreement leads to lack of employment contract only when there is no norm which to "fill in" the components and to "preserve" the contract as legal basis, instead of the clause. Any norm, regardless of its source (state or non-state) and type (imperative, dispositive with or without an imperative boundary), replaces the missing clause and instead fills in the content of the employment contract as a basis for the formation of legal relations. That is why the existence of a norm prevents bargaining from causing the consequences inherent to the essential components, and deprives the elements included in them of the ability to function as such. **Thirdly**, the legislator must not only refrain from regulating the elements in the essential components, but also prohibit non-state sources from doing so instead. By allowing non-state sources to settle them, the legislator automatically excludes them from the essential components of the employment contract and deprives said elements of the opportunity to cause the consequences inherent thereto.

Having stated the necessary prerequisites, the book analyzes their presence in the current labour legislation. **Firstly**, it is established that in Art. 66, Para. 1 of the Labour Code, the legislator regulates 17 elements that must be part of the essential components. Enumeration is chaotic, which is why the exposition does not follow it, instead choosing to analyze only those items that regulate rights and obligations under the future employment relationship. Initially are analyzed the elements characterizing the labour activity as the key contract's subject for the employee, and then those determining the rights he receives as due return towards him. **Secondly**, the lack of an express provision is criticized in the sense that, if parties do not agree on the elements of the essential components, they will not conclude an employment contract, unless there is a provision to replace the missing clause. Defended is the thesis that the contradiction with non-state sources should be settled as grounds for invalidity of the contractual clause, in which the norms of non-state sources replace it and supplement the content of the employment contract. It should also be explicitly regulated that the absence of a contractual clause does not lead to complete invalidity when there is a non-state source norm to replace it under the employment contract. **Thirdly**, reasons are given for which the legislator cannot leave with no regulation the most important labour rights and obligations, as well as cannot prohibit non-state sources to do so instead. The conclusion is argued that in the future, regulation will not only not be reduced, but will be enriched with the help of various types of non-state sources, which, in competition with each other, will regulate more and more

favourable rights for employees. Increasingly effective regulation by state and non-state sources will ensure the application of the most employee-friendly regime, but at the same time will not allow parties to harmonize the rights and obligations included in the "essential components", to control the occurrence and determine freely the content of their future employment relations.

The book gives reasoning to the thesis that the way the parties' freedom of bargaining about the essential components of the employment contract is settled is an objective, internal contradiction. The legislator includes certain elements in the essential components of the employment contract, but at the same time not only regulates them, but also encourages non-state sources to do it together with him or instead of him. The legislator obliges parties to agree on them, but at the same time does not allow them to cause the full range of legal consequences inherent to the essential components. The conclusion is that the legislator does not have the opportunity to ensure the existence of all the prerequisites so that bargaining of the elements defined by him as important and subject to mandatory negotiation can cause the consequences inherent to the essential components. To this end, **he modifies the "classic" preconditions for bargaining the essential components,** providing what he considers to be protection to the employee and his labour rights. Lacking agreement does not lead to lack of employment contract, but to its conclusion – and not with the agreed content, but with the one normatively regulated and most favourable for the employee.

This is the reason the content of the employment contract, regulated in Art. 66, Para. 1 of the Labour Code, be divided into **two parts**, as follows: one, the agreement upon which gives rise to all the inherent consequences of the essential content and is therefore defined as substantive essential content, and the other one, whose negotiation fails to provoke them and is defined as non-substantive essential content. **The substantive content** includes only the title of the position, and its negotiation is sufficient for the conclusion of the contract, respectively its absence is an insurmountable obstacle to the establishment of labour relations. It is an emanation of contractual freedom in labour law, which, going beyond the content of the specific element, determines the conclusion of the employment contract as a basis for the emergence of labour relationship.

The non-substantive content includes those elements, specified in Art. 66, Para. 1, item 1, point 3- point 8 of the Labour Code, the negotiation of which does not affect the concluding the employment contract, but only its content. The legislator significantly restricts the freedom of their bargaining, providing significantly less opportunities for parties to

influence their future legal relationship. **In the first place**, neither the agreement reached on the elements within the meaning of Art. 66, Para. 1, item 1, point 3 - point 8 of the Labour Code is sufficient for concluding an employment contract, nor does its absence lead to the impossibility of establishing labour relations. On the contrary, despite the lack of clauses, the employment contract is concluded, but not with the content decided by the will of the parties, but with normatively established one.

In the second place, negotiating the elements referred to in Art. 66, Para. 1, item 1, point 3- point 8 of the Labour Code, parties have no right to violate the different in type and content normatively established boundaries. The state uses a different approach to control the freedom of contract when it comes to the parameters of the labour due by the employee and the parameters of the rights for the labour's provision due by the employer. The legislator single-handedly regulates the maximum permissible boundaries on the use of labour force, forbidding non-state sources to regulate and change these limits in any way. The legislator explicitly defines the preconditions, under which the permanent and mobile place of work are agreed, as well as the limits within which the permanent place of work is determined. Imperatively regulated is the length of working time when the parties agree on full-time work, as well as the elements they must agree on in the event of part-time work. Any deviation from the parameters of negotiating the type and boundaries of the place of work, as well as the type and duration of working hours, leads to invalidity of the clauses and to their replacement by the relevant regulations.

With respect to the freedom to bargain the size of fundamental labour rights, the approach is completely different. The legislator regulates minimum imperative amounts, not only allowing but also stimulating the various types of non-state sources in competition with each other to replace the state legal provisions, thus establishing more favourable normative standards for employees. By agreeing on the amount of basic remuneration, the different types of paid annual leave and the duration of the notice of termination, parties may improve the existing normative values. Provided that parties agree on lesser amounts of rights, the clauses run counter to the imperative in the applicable source, are invalid and replaced by the relevant provisions. The missing contractual clauses, in turn, are replaced by norms establishing the most favourable regime for the employee, regardless of whether they are of state or private-legal origin. There is only one exception to this situation related to the negotiation of additional remuneration for length of service and professional experience where the parties agree on less favourable parameters in comparison with the normatively established ones.

Accepting the fact that the essential components of the employment contract go beyond the classical understanding, allows the book to focus on the possibilities and various consequences that bargaining of the elements included in it causes. All elements included in the substantive and non-substantive content are analyzed, and the most important characteristics, including their nature and significance in the future employment relationship, are examined in detail; the subject and the possibilities for bargaining; the grounds for the invalidity of the clauses and the consequences of their replacement by the relevant provisions. The rich and up-to-date practice of the Supreme Court of Cassation and the Supreme Administrative Court complements the analyses and enriches the conclusions, allowing the correct solution of many studied practical problems.

The book argues the **essential difference between the position and its title,** emphasizing that **the position** shows the content and nature of work as the main subject of the contract that the employee must perform and the employer can assign and receive as performance. Indicated is the importance of the position as legal boundary between the obligations "included in it" and therefore enforceable, and those which "remain outside it" and should not, in principle, be fulfilled. Examined in detail is the procedure for compiling and entering into force of the job description as the main tool with the help of which the employer single-handedly determines the number, type and content of the duties included in the position. Emphasis is placed on the lack of legal guarantees for the employee in cases when, with the help of the job description and without changing the name, the employer assigns new and/or changes the existing obligations, and proposals for changes in the current legislation are made.

The title is defined as the verbal designation of the position, which does not reveal the content and cannot be used both for its individualization and for its comparison with other positions. Examined in detail are the aspects of restriction of the freedom to bargain the title of the position, which the Art. 66, Para. 4 of the Labour Code in connection with the rules of the National classification of occupations and positions (NCOP) establish, making reasonable conclusions about the excessiveness and unfoundedness of the legal prohibitions. The hypotheses of violation of the mandatory provisions, the invalidity of the clauses and the consequences caused thereby are indicated.

The conclusion that, by virtue of Art. 66, Para. 1, item 2 of the Labour Code, parties must agree on the title of the position but not the work obligations it performs, raises a number of questions about the applicability of basic principles such as: definition of the position,

prohibition on its unilateral change, and remuneration of labour. Analyzed are hypotheses usually occurring in practice when, instead of and/or simultaneously with the job title, parties agree on other elements and cause specific consequences, such as the possibilities for judicial protection in case of violation of employees' rights.

The book defines **the agreed place of work** as a legal parameter showing "where" the employee has an obligation to work, respectively where the employer has the right to assign it to him and requires its performance. A distinction is made between the place of work and the workplace, and the thesis is defended that the agreed place of work determines the boundary within which solely the employer determines the workplace where the employee must work. Emphasis is placed on the importance of the agreed place of work as a boundary, beyond which the employer has no right to assign work and the employee has no obligation to perform it. Analyzed in depth are the grounds, content and consequences of exercising the testamentary rights, with the help of which and as an exception, the employer can change the agreed place of work.

The conclusion is defended that the legislator regulates **two types of place of work**, which are terminologically referred to as "mobile" and as "permanent" place of work. It is argued that the nature and content of the work obligations included in the position determine the manner of its implementation, and hence the type of place of work. The specific dependence between the position created by the employer with the help of the job description, and the place of work as a parameter indicating its performance, is studied. **The permanent place of work** implements the principle, because the performance to do with positions is usually done by the employee's remaining in the same place and, therefore, it can and should be defined as a specific territory, the boundaries of which the parties indicate as part of the employment contract’s component. **The mobile place of work** is defined as the exception, because the performance of only a small part of the obligations takes place during and through the movement of the employee. It is argued that it cannot be located and defined as a specific territory within which the employer assigns the work that the employee performs. The essential differences are successively pointed out between mobile and permanent place of work and the mutually exclusive consequences which arise because of them in the labour relation.

Proven in detail is the thesis that, in the sense of Art. 66, Para. 1, item 1 and Para. 3 of the Labour Code, parties **agree on two components as follows: type of place of work and, possibly, its boundaries.** The first component, on which agreement is reached, is the type of

place of work, and more precisely whether it is permanent (with boundaries) or mobile (without boundaries), and only if it is permanent, its boundaries are determined. The type of place of work determines the scope and content of the contractual freedom, it being more limited in the mobile place than the one granted in relation to the fixed place of work. This is the reason why the book separately analyzes the type of positions for which the two types of workplace can be agreed, and the consequences of the invalidity of clauses that violate the imperative restrictions. The different variants of lawful determination of the clauses are indicated, as well as the ways for judicial protection of employees in the hypotheses of violation of the legal requirements.

The hypotheses of lack of clauses regarding the type and boundaries of the place of work, their replacement by the relevant legal provisions and the consequences caused by this, are considered. The book examines the relationship between the agreed mobile place of work and the rights of the employer under Art. 120 and Art. 121 of the Labour Code, and also the influence the boundaries of the permanent place of work have on their exercise. The importance of the agreed type of place of work in determining the local jurisdiction of labour disputes in deviation from the general rules of the Civil Procedure Code is considered.

The book defines **the agreed duration of working hours** as one of the two criteria by which the legislator determines the work due and measures the actual amount of labour provided by the employee and received by the employer. The other criterion is the labour norms, which, unlike the duration of working hours, are not determined by mutual agreement of the parties, but unilaterally by the employer. It is stated that the agreed duration of working hours does not determine the content and nature of the work due under the legal relationship and therefore it cannot, and does not actually "measure" the way in which labour is performed. Emphasis is placed on its importance as a legal norm, showing the amount of work that the employee agrees to output and the employer to receive under the legal relationship. The various claim rights are analyzed, with the help of which the employer can assign the performance of more than the agreed amount of work, comparing the consequences caused by their exercise.

Proven is the thesis that, by virtue of Art. 66, Para. 1, item 8 of the Labour Code, the parties **agree on two components by firstly determining the "type"** and, depending on whether they **choose full-time or part-time work, agree on its "duration" and "distribution"**. By agreeing on **full-time work**, they do not have the right to and do not determine its duration, but agree with the one regulated by the legislator. Parties do not have the right and do not agree on the way in which full-time work is calculated and reported, because

these parameters are determined solely by the employer with the help of the internal labour regulations. The book analyzes in detail the hypotheses of invalidity of the clauses, which, in violation of the imperative, calculate and/or distribute full-time work, the consequences caused and the options for judicial protection of employees' rights. Emphasis is placed on the fact that invalid clauses are not replaced by a state law norm, because there is no such norm, but by the norm in the regulations settling the respective element of the regime of calculation and/or distribution of working hours. Unlike full-time work, when **part-time work is agreed**, parties not only have the right, but also must agree on its duration and distribution. The analysis allows to show the imperfections in Art. 66, Para. 1, item 8 of the Labour Code and to make substantiated proposals for their legislative overcoming.

The limits of contractual freedom are analyzed in terms of the choice of the type of working time, as well as in terms of its duration in full-time and part-time work. Types of state sources are given which set the imperative boundaries of negotiation, the different variants of their violation and the consequences caused by it. Examined are cases of lack of clauses and the types of norms that replace them and instead fill in the content of the employment contract, keeping it as a basis for the employment relationship to arise. The book examines in detail the importance of the agreed duration of working hours as a norm, which, calculating and allocating working hours, the employer has no right to change. Based on cases are examined the hypotheses when a summary or daily calculation and distribution of the working time introduced by the employer violates what has been agreed and the legal means for protection of the rights of the employees. The importance of the agreed type of working time in relation to the minimum amount of basic remuneration under the duration-of-work system is taken into account; calculation of full length of service for the purposes of paid annual leave and for the purposes of additional remuneration for length of service and professional experience; of the existence of a minimum insurance threshold below which the insurance contributions for both parties are not calculated and paid; to calculate the length of service, etc.

The book characterizes **the basic remuneration** as the monetary subject of the contract that the employee receives for actually performing and providing labour, and the employer pays for assigning and receiving it. It is argued that the basic remuneration does not take into account and does not compensate for the difference in the qualities of the workforce, nor the differences in the manner and conditions of its provision. **The agreed amount of the basic remuneration** is characterized as the amount of the monetary sum which - according to the parties - reimburses the labour activity provided and received in due nature and quantity. It is stated that this amount

does not reimburse any work done in excess of the amount of work due, nor work done in another nature than the one due; for these, the legislator regulates additional remunerations differing in type and minimum amount.

The remuneration system is defined as a set of rules determining the basis and amount in which the basic remuneration is paid up. The **three systems** are analyzed and the thesis is argued that they use alternative criteria for measuring the due and taking into account the actually provided nature and amount of work. Under **the duration-of-work system**, the work due and provided is measured only by the agreed length of working time, which makes the parties quite equal, ensuring "stability" and "predictability" in their rights and obligations. It is emphasized that the agreed amount of the basic remuneration is paid when, during the whole working hours and in compliance with its beginning and end, the employee fulfills the labour obligations determined by the employer. Numerous examples are given of the practice of illegal "contracting" and the use of criteria other than the admissible ones, thus analyzing the consequences and possibilities for judicial protection of the employees concerned. In the **results-of-work system**, the due and actually provided nature and quantity of labour is measured only with the help of labour norms, which puts the parties in "disparity" because they agree on the amount of the pricing per piece, while the labour due for its receipt is determined and changed by the employer. Amendments to the current legislation are proposed, which aim to overcome the mentioned problems, limiting the unilateral change of the type and size of the labour norms. It is stated that, like the other two systems, the **mixed system** uses only one criterion, which, however, includes two components that determine the work due and measure the work provided.

The book defends the thesis that, by virtue of Art. 66, Para. 1, item 7, proposal one of the Labour Code, parties agree on **two different components as follows: the payment system and the amount of the basic remuneration**. Depending on the type of system chosen, they agree on a different number of elements as part of the content of the employment contract. In the duration-of-work and results-of-work systems, parties agree on the amount of only one basic remuneration or pricing, while in the mixed system they agree on the amounts of two different basic remunerations: one determined by the rules of the duration-of-work system, and the other - by the rules of the results-of-work system. The prohibition on negotiating the criterion, by which the basic remuneration is calculated, is analyzed in detail, considering the most common practical examples of its violation with the help of different types of and motivations for "deductions" and the possible judicial protection of violated employees' rights.

The competition between state sources and different types of non-state sources is studied in the process of determining the source which **regulates the amount of the basic remuneration and/or the pricing under the duration-of-work system** and establishes the imperative limits of contractual freedom. The thesis is substantiated that, regardless of whether it is state or non-state, this is the source regulating the highest amount in comparison with all other amounts of basic remuneration and/or pricing. Cases of contradiction with the Council of Ministers' Decree, with collective labour agreements or internal salary rules, which leads to invalidity of the clause, are in turn considered. The effect of the court decision is analyzed, which declares the partial invalidity of the contract, replaces a clause with the respective norm applicable to the legal relationship. The differences with the **results-of-work and mixed systems** are emphasized, in which there is no state regulation and therefore, the competition for determining the source, regulating the minimum pricing and establishing the imperative limit, is only between the different types of non-state sources.

The book examines the various hypotheses when the employment contract lacks clauses regarding the system of payment and/or the amount of the basic remuneration/pricing per piece, and the order of their replacement by the respective norms. Again, the principle is that the source which settles the highest amount of basic remuneration in a duration-of-work system replaces the others and regulates the legal relationship. Its norms replace the missing clauses and instead fill in the components of the employment contract, because they are the most favourable for the employee and regulate the highest value of his basic salary. These are the reasons why the book does not share the generally accepted thesis that the lack of clauses regarding the amount of basic remuneration leads to complete invalidity and to the impossibility of the employment contract to serve as a basis for legal relationship. The importance of the contractual type of payment system is analyzed in detail, arguing that it can be changed only by virtue of the agreement reached between the parties, objectified in a supplementary agreement in writing. Its importance in determining the presence, respectively lack of state-regulated imperative minimum limits of the amount of the basic remuneration, is indicated. Having agreed on the type of system, parties determine the applicability of the different rules to calculate the basic remuneration and/or pricing.

The normative regulation of the additional remuneration for length of service and professional experience is analyzed in detail, indicating the deep differences between it and the regulation of all other types of remuneration. With the help of a presumption in which "length of service" replaces "real experience", the state system deviates from the objective reporting

and measurement of the improvement in the way of work of the individual employees. On the other hand, it contains the most favourable regime of occurrence, for determination and change in the amount of additional remuneration for employees. With the exception of the percentage size for each year of service, the state regulation has no value and does not play the role of a minimum standard, which non-state sources and parties to the employment relationship better not violate. On the contrary, it contains the most favourable regime, which, with the help of internal salary rules, the employer has the right to significantly worsen. The thesis is argued in detail that no matter how unfavourable in comparison with the Ordinance on the Structure and Work Salary the internal rules of the employer are, their norms replace the state legal provisions and instead determine the limits of contractual freedom of the parties. The sanction given to collective agreements is also examined, by indicating the numerous problems it creates and giving concrete proposals for overcoming them.

The book defines **the additional remuneration** as a monetary expression of the contract's subject that awards the presumed improvement in the way of work, which, as a result of the experience gained over the years, the employee provides and the employer receives. Once included in the employment contract, the presumption becomes irrefutable and binding on the parties, determining their rights and obligations in relation to the additional remuneration. It is not the improvement in the work demonstrated by the employee, but the application of the agreed presumption that determines the occurrence, payment and increase of his additional remuneration. It is argued that it compensates for the presumed difference in the way the employee works over the years, but not the difference between his and other employees' performance. The fact that an employee is entitled to an additional remuneration in a particular amount does not mean that that person works better than others who do not yet receive it, or receive it in smaller amounts.

The conclusion is defended that, by virtue of Art. 66, Para. 1, item 7, proposal two of the Labour Code, parties are obliged to agree on: 1) the length of service or professional experience that are grounds for occurrence of additional remuneration; 2) the percentage amount for each year of service or professional experience in determining the amount of additional remuneration; 3) the number of years of service or professional experience for determining the amount of the additional remuneration; 4) the moment when the right to additional remuneration arises and 5) the period of time, during which its amount increases. The limits, within which the parties agree on each of the stated components, the legal consequences of their violation and the replacement of invalid clauses by the respective norms

of the internal rules or the ordinance are examined in detail. The competition between the different types of sources is analyzed, within which - with the exception of the percentage for each year of service - **the one source giving the most objective regulation, but also the most unfavourable vis-a-vis employee, is applied**. Various hypotheses of lack of contractual clauses are indicated and the consequences of their replacement by the respective normative provisions are examined. Emphasis is placed on the importance of the agreed amount of additional remuneration for the amount of gross remuneration and compensations, the amounts of which are calculated on its basis, considering a number of examples from the practice of illegal clauses, and the options for judicial protection of employees.

A reasonable distinction is made between the types of remuneration, **the periodic payment** of which the parties are obliged to agree on, and the payment of which does not fall within the parameters determined between them. The bargaining limits and the various hypotheses of invalidity in case of their violation, the consequences and the ways of judicial protection of the employees are studied. Emphasized is the importance of the agreed parameters of periodic payment of the basic and additional remunerations with regard to the moment when they become due, the employer falls into delay and the limitation periods begin to run.

The book characterizes **the agreed amount of paid annual leave** as a parameter determining the period of time during which the employee has no obligation to perform, and the employer has no right to assign and receive, the work due under the legal relationship. Its significance is taken into account as a period of lawful inactivity on the employee's part, for which the employer has no right to apply disciplinary and/or proprietary liability. The paid annual leave also determines the time during which, without working, the employee receives a monetary receivable from the employer, the purpose of which is the former's financial security. Emphasis is placed on the fact that the agreed amount of paid annual leave determines the period of time during which the relative legal protection in case of dismissal is present in order to maintain, or at least significantly hinder, the employer in any process of unilateral termination of legal relation. The features of **the three types of paid annual leave** are analyzed, the alternative or cumulative use of which - according to the legislator - provides the period of inactivity which restores the physical and mental working abilities as effectively as possible.

The book argues that under Art. 66, Para. 1, item 5 of the Labour Code, the parties only agree on the amount of paid annual leave, but not on the type of paid annual leave the employee uses. It is proved that they are not entitled and cannot negotiate the amount of the monetary

receivable paid during the use of the leave, by analyzing a number of practical examples of attempts to illegally reduce the financial burden on the employer. It is emphasized that the parties have no right and cannot agree on a different procedure for the use, postponement and repayment of the three types of leave, the consequences of violating this prohibition and the possibilities for judicial protection of the employees concerned.

Analyzed one after the other are the boundaries of negotiating the amounts of basic, extended and additional leave; it is emphasized that their normative regulation is a typical example of the method of labour law, in which the choice of source is based on who determines the highest amount of leave used by the employee. Hypotheses are discussed in detail of the absence of a clause regarding the amount of leave and the legal consequences caused by its replacement by the norms of the respective source.

The book proves that regulation of **the notice period** is casuistic, fragmented and lacking a unified and consistent legislative approach. Reasonable conclusions are made that parties have no right and cannot agree on the term of the notice of fixed-term employment contracts, of the ones concluded on the grounds of Art. 110, Art. 111 or Art. 114 of the Labour Code, the additional employment contracts and the employment contract for internship under Art. 233b, Para. 1 of the LC, because it is regulated by explicit provisions. However, they may coordinate it when concluding a basic and additional contract under Art. 259 of the Labour Code for an indefinite period of time, because it is regulated by dispositive norms, with an imperative minimum and maximum boundary.

The thesis is argued that the legislator allows the norms of the collective labour agreement to "violate" the principle under Art. 66, Para. 1, item 6 of the LC for equal term of notice, guaranteeing the equality of the parties upon termination of the employment relationship. As a result, **two regimes of the notice period** are created and applied, establishing different consequences depending on who and on what grounds terminates the employment relationship. There exists a hypothesis of unequal, discriminatory treatment of employees on the basis of a legal feature which does not allow and should not be used to establish labour rights differing in content. The fact is criticized that regardless of how much more favourable the norms of the collective labour agreement are, they do not apply to all employees in their capacity as addressees, but only to those who are parties to a basic or additional contract under Art. 259 LC, concluded for an indefinite period of time. All those, who work under fixed-term

basic or additional contracts under Art. 259 of the Labour Code, are left without protection, regardless of the length of their service, grounds for dismissal, etc.

The book characterizes **the agreed period of notice** as an element that determines the moment, at which the employment relationship is terminated automatically and for the future, after one of the parties has exercised its right to unilateral termination. The essence of the change caused by the notice is analyzed in detail, emphasizing the fact that, with one exception, the content of the legal relationship is preserved as it is at the time of the notice's service. It is stated that the agreed period of notice determines the amount of compensation that the non-compliant party must pay, analyzing the types of damages it covers and the basis on which it is calculated.

A distinction is made in detail between the hypotheses when the parties must and can agree, and when they cannot agree, on the duration of the notice period, the invalidity of clauses and the consequences arising from them. It is argued that the parties cannot and do not agree on the moment when the notice period begins to run, the moment at which it expires and the grounds (hypotheses) at which the notice period ceases to run. Termination on the basis of an invalid notice period clause has a variety of consequences which are being investigated, as are the possibilities for judicial protection available to employees. Hypotheses of lack of a clause in the content of the employment contract are shown, as well as the way in which it is replaced by the respective provision in the Labour Code or in a collective labour agreement.

The analysis of the individual components allows to be argued the need for several major changes in the provision of Art. 66, Para. 1 of the LC. The legislator must retain the parties' obligation to agree on the components included in the substantive and non-substantive content, by specifying their number and type, excluding the elements of imperative regulation and those that are not relevant to the rights and obligations of any future legal relation. The legislator must correctly indicate the components that the parties actually agree on and cause various, and in some cases, mutually exclusive, consequences. The exact listing of the components will help the process of transforming normative standards into individual parameters of conduct, and will make "visible" the close connection between the necessary content and the most important legal institutes, the content of which is largely determined by its negotiation.

The steady trend of increasing the importance of different types of non-state sources, and the competition between their norms in determining the most favourable regime for the employee, require that the book analyze the state sanction. The problems arising from the lack

of a complete and non-contradictory regulation of the collective labour agreements, the internal salary rules, and the internal labour regulations, are consistently pointed out. A number of proposals are being made for changes in the state sanction regulation which would facilitate both the negotiation process and the practical protection of labour rights. The conclusion is substantiated that the provision in Art. 66, Para. 2 of the Labour Code must precisely set the limits of contractual freedom when determining more favourable labour rights and working conditions for the employee in comparison with those established by state and non-state sources. It is proved that the invalidity institute must be supplemented by pointing out that lack of clauses in the sense of Art. 66, Para. 1 of the Labour Code does not lead to absence of employment contract, when there is a provision in a state or non-state source replacing these clauses and filling in its content instead. It is also necessary to explicitly regulate the rule that the clauses of the contract that contradict a collective labour agreement, internal salary rules or internal labour regulations, are invalid and replaced by the norms of the respective non-state source.

The book defends the thesis that the legislator must accurately distinguish the rights and obligations that are subject to negotiation under Art. 66, Para. 1 of the LC from those the content of which is determined by the employer alone. This would allow to properly understand and assess the significance of the agreed upon as an imperative framework, within which the employer exercises its organizational/managerial and rule-making power. The lack of definitive regulation of key institutes such as position, job description and full-time work is defined as weaknesses that further complicate the negotiation process. Proposals made for the creation of such definitive regulation would increase the effectiveness of legal protection of employees in each of the cases when the employer unilaterally changes the agreed parameters without any grounds for it.

The book bears no claim of infallibility or finality of the analyses and conclusions made about the number and type of components of the essential content, of the boundaries in negotiating and the consequences it causes. It is based on the understanding that the essential content needs to be viewed and read in a way which not only "theoretically" but in reality takes into account the link between the negotiation and the definition of the content of the basic labour rights and obligations. Such approach would stimulate the expression of free will in the process of concluding employment contracts and affirming their importance as the most significant basis for the emergence and establishment of the employment relationship’s content.

Studies

1/Work remuneration - regulation, interests and realities. Part One. - Legal Review, 2017, № 2, 110-121.

This study analyzes the complex structure of work remuneration and the different types of remuneration in terms of grounds and size the structure includes. Substantiated conclusions are made that the basic remuneration each employee receives is paid only for the actual labour provided by him. Arguments are put forward in support of the thesis that basic remuneration does not compensate the difference between the due and actually provided amount of labour, nor the difference in the qualities of the labour force, etc. These specifics the Bulgarian legislator compensates with a wide range of additional remuneration, one part of which are paid for the difference in the qualities of the provided labour force, and another - for the difference in its quantity, in the working conditions, etc. The first group includes: the additional remuneration for length of service and professional experience (class), for educational and scientific degree "Doctor" and for scientific degree "Doctor of Sciences", and in the second group: the additional remuneration for overtime work, for night work and for work during public holidays. The three systems which measure the due labour and report the labour actually provided, and the alternative criteria each of them uses, are examined in detail. Substantiated conclusions are made about the mutually exclusive consequences that the systems give rise to in the legal employment: the duration-of-work system, the results-of-work system and the mixed system. The state imperative regulation of the minimum amounts of the basic and different types of additional remuneration is analyzed, as well as its significance as a legal guarantee that even if parties do not agree on the respective type of remuneration or agree on a smaller amount, employees will always be entitled to and receive the type of remuneration due by law in its minimum amount.

It is concluded that the legislator regulates a minimum amount of basic remuneration which applies to all employment relationships, regardless of specifics of the position held and professional qualification required. However, the legislator does not create mechanisms to change this minimum amount in case of change in poverty line or change in the national average wage. It does not regulate differentiated minimum amounts of basic wages and such that take into account specifics of the various branches and industries, but transfers this "responsibility" to representative employers' and trade union organizations, which must regulate them in collective labour agreements. In this context, persistent disputes over the formula and the way

to calculate and determine the minimum wage in the country do not raise, but rather deliberately avoid the issues, the resolution of which could serve for real changes in the current labour legislation.

Different types of non-state sources (collective labour agreements and internal rules about salaries) are also studied, which, by virtue of the explicit state sanction, settle higher amounts of labour remunerations than the amounts established by the legislator. Emphasis is placed on the additional normative regulation which replaces the state legal one and provides employees with a more favourable regime of labour remunerations. Last but not least, options of non-state sources are considered to regulate types of additional remunerations which the state does not regulate, and with their help to "stimulate", respectively "sanction", elements of significance to the parties such as work results, work performance, etc.

2/Additional work remuneration for length of service and professional experience - regulation, expectations and realities. Part Two. - Legal Review, 2017, № 7-8, 54-64.

The article analyzes the additional remuneration for acquired length of service and professional experience, and aims to answer the question whether there is an objective need for its payment or if it is an archaic "remnant of the past". The article examines the legal features of the subjective claiming right to additional remuneration, including the grounds and timimg of occurrence of the right; determining the amount of remuneration and the period of its increase.

Arguments are put forward to defend the thesis that this is the only labour remuneration paid for presumed, not for actually provided labour, which presupposes the significant differences in the regime of its payment. It compensates for the expected improvement in the way the employee performs his duties over the years and as a result of gaining experience, knowledge and skills. Its presence as part of the natural development of human abilities, knowledge and skills is beyond doubt, but at the same time its accurate reporting and awarding are a real and difficult challenge for the Bulgarian legislator. Therefore, the statement analyzes in detail these objective prerequisites that would ensure the emergence and development of a positive change in the work of the employee, and would justify the fairness of the additional remuneration paid.

The legislator provides a regulation that is detailed but, unfortunately, significantly deviates from the objective parameters of the positive change in the way of work. In practice,

he exacerbates the difficulties in reporting and measuring work, calling into question the payment of the additional remuneration itself. The analysis leads us to conclude that by using the length of service, the legislator regulates a regime most favourable for employees, yet the most biased when it comes to occurrence, payment and increase of additional remuneration's amount. At the same time, the length of service allows the employer to create a more objective, but also quite unfavorable scheme for his employees. Helped by professional experience, employers can regulate those parameters to do with occurrence, payment and increase of remuneration, thus realizing their interests to the greatest extent.

The article argues that the current regulation needs changes that provide more effective guarantees for both labour remuneration and free economic enterprise. A typical example is the lack of a final moment in which, although the employment relationship continues to exist, the positive change in the way of working objectively ceases to exist and the additional remuneration does not have to be paid. Continuing the payment contradicts the natural process of gradual, but at the same time irreversible deterioration in time of the physical and mental abilities of the employee and the way in which he performs his work duties. It contradicts one of the main provisions in the Bulgarian social insurance law and more precisely that, upon reaching a certain age (retirement age), occurs the "absolute incapacity for work".

3/ On some issues for the specified terms of the individual employment relationships. - In: Jubilee collection dedicated to the 80th anniversary of Prof. D.Sc. Vassil Mrachkov. S., Labour and Law, 2014, 277-298

The article aims to analyze to what extent the significant changes, introduced by the legislator in the regulation of certain terms, successfully prevent the "chain effect" of fixed-term employment contracts. Analyzed are all aspects of restriction of the contractual freedom and options for lawful coordination of different types of terms. The grounds, based on which the parties have the right to agree on certain time limits, are subject to a detailed analysis, as are the length of terms and the content-differing prohibitions for their re-negotiation. The rich practice of the Supreme Court of Cassation is also studied, within which the legal criteria and the manner of their application in the process of establishing the different types of certain terms of employment are specified.

It is argued that, despite the intensive legislative intervention, the end result does not prevent in any way a repeated negotiation of clauses for a given period. This also allows to draw conclusions about the excessiveness of the imperative restrictions which, instead of

overcoming the practical problems, unreasonably restrict the contractual freedom and put obstacles in front of the options for its normal functioning. Specific changes are proposed, the implementation of which in the current legislation would provide the necessary legal protection for the employees without hindering the realization of the right to free economic initiative.

4/ Social services - concept and main legal characteristics. - Juridicial World, 2014, № 1, 132-144.

The study analyzes the Social Support Act and its Implementing Rules, the Child Protection Act and its Implementing Rules, the Ordinance of the Minister of Labour and Social Policy № 4 on the terms and conditions for providing social services, and the Tariff for Social Services Fees financed by the national budget, in order to identify the characteristics that define social services as one of the two elements in the right of the citizens of the Republic of Bulgaria to social support. The study focuses on the constitutive features that reveal social service as a generic concept, and allow the study of many different types of services. The work identifies the main differences between social services and social benefits, and outlines their importance within the right to social support. It examines in a consistent manner the current commitments of the state in the process of regulating, financing and providing the necessary prerequisites for effective functioning of the social services system in the context of the social character of the state proclaimed in the Preamble of the Constitution of the Republic of Bulgaria, and the right of citizens to social assistance regulated in Art. 51, Para. 1 of the Constitution.

The features of the “new” figures in Bulgarian social legislation are analyzed: that of “provider” and “consumer” of social services, the way they are defined and the problems this definition raises. The main types of providers are considered in detail, the significant differences in their legal regime, as well as the peculiarities in the hypotheses of delegation of activities financed from the national and municipal budgets.

It is concluded that the legislation clearly shows the tendency to reduce the commitments and activities of the state in the field of social services, which is associated with a process of "diminishing" of the "social element" when using them. This situation puts at risk the social services’ actual goal which is to meet the objective needs of citizens. Proposals are being made, whose adoption would ensure that if the state does not have the resources and ability to provide such minimum guaranteed services for all categories of people in need, it should do so at least in relation to the categories for which under the Constitution it has an obligation to provide special care.

5/ Effective legal protection - the new challenge before labour legislation.-In: Current problems in labour and social insurance law. Vol. VII. The challenges facing Bulgarian labour legislation. S., University publishing "St. Cl. Ohridski", 2015, 69-80

The article examines the problem with the effectiveness of the legal protection provided by the legislator by directly linking its content to the achieved final result. Protection is defined as effective, if it contains those legal means and methods that overcome the objective need for regulatory intervention, without burdening the parties with unnecessary obligations and financial load. The effectiveness of the legal protection should not be explained on the basis of abstract objectives and the need for "more and more rights", because in these cases it is limited to its formal existence as "protection for the sake of protection". It is argued that the obligations of the employer, the implementation of which does not create new rights or enrich the content of existing employees' ones, or at least does not facilitate their implementation, remain at the level of its "formal" performance as "obligations" because they are "obligations". At the same time, they extend the public authorities' scope of control. Also, instead of concentrating on compliance with the really important obligations, the employer is wasting efforts on implementing obligations that are formal and irrelevant. Without achieving any real legal effect, the said protection leads to an unprincipled and unjustified restriction of the contractual freedom of the parties in employment relationship, restricting the free economic initiative of the employer and the options of employees to work.

In the context of the set parameters, the article considers the procedures (rules) which are not implemented between the employer and the employee, but between the employer and third parties other than the parties to the employment relationship. The relationship between employer and employee is "mediated" by the active participation of a third party, in particular trade unions, workers' and employees' representatives, occupational health services, safety and health officials or working conditions' committees. Motivated conclusions are made that, despite some contradictions, some of these procedures actually protect the interests and rights of employees in specific cases, and should find support. Procedures such as these include: implementing mass layoffs, extension of working hours, introduction of part-time work, etc.

The article also examines another group of procedures in the field of health and safety working conditions, the application of which can hardly be explained as necessary, much less as useful. Analyzed in detail is the need of the existence of Committees on working conditions (WCC) and Groups on working conditions (WCG), and the effectiveness of the

realization of the many rights these groups possess. It is concluded that it is not right that in one of the most sensitive and socially important areas of labour legislation funds are spent and resources are committed so as to create and train an entity that is a "partner" to the employer in the discussion and fulfillment of the latter's obligations to ensure safe and healthy working conditions. A legislative decision on their establishment and functioning is defined as "imitation" and not as the provision of necessary, real and effective legal protection. Such decision follows a trend of "multiplication" of different procedures, the purpose of which is limited to the level of formal discussion, cooperation, participation, etc. Emphasized is the fact that a significant part of the rights of WCC and WCG are duplicated with those of trade unions, including but not limited to: participation in the identification of accidents at work, participation in the development of draft internal regulations in the field of safe and healthy working conditions, establishing duty violations, etc. Proposals are made for legislative changes to terminate the existence of employer's obligations the implementation of which does not enrich the protection for employees, but unreasonably restricts the free business initiative and contractual freedom of the parties.

6/ The subjective right of non-observance of the term of the given notice - essence, procedure for exercise and legal consequences In: DE JURE, 2018, Official publication of the Law Faculty of the University of Veliko Tarnovo "St. St. Cyril and Methodius ", 5-12

The article analyzes the characteristics of the testamentary right of each of the parties to the employment relationship not to comply with the notice period. The holder of the right, the elements to do with grounds and order of exercising the right, as well as specific consequences it causes to the legal relationship, are examined in detail. The problems that non-observance of the notice raises are considered, as are the main provisions in the practice of the Supreme Court of Cassation on its implementation. Argued is the thesis that such right gives the employee and employer the particular opportunity to "manage" the life of the employment relationship and to determine its duration solely with their interests and wishes in mind. The detailed analysis of the obligation to indemnify shows the latter's importance in the context of preserving and guaranteeing the property rights of the parties, regardless of the adverse consequences they suffer. This allows the testamentary right to non-observance of the term of given notice to be defined as an original legislative decision proven in practice which realizes the principle of freedom of labour when choosing the moment to terminate the employment relationship.

7/ The right to social support in the context of social assistance and social service, In: Current problems of labour and social insurance law. T. H. S., University publication "St. Cl. Ohridski", 2018, 69-80

The article analyzes the right to social support as a set of obligations of the state related to the creation of legislation and provision of financial and administrative resources necessary for building and maintaining the social support system. Its functioning requires accurate identification of the needs of the poorest and most needy, and showing the results necessary for their overcoming, and its ultimate goal is rapid recovery and lasting preservation of the normal life of the citizens of the Republic of Bulgaria. The statement identifies and analyzes consistently the features of social support and social service as the main elements of the right to social assistance, which in their combined effort ensure and guarantee its implementation.

The main conclusion of the article is that social support and social service differ not only in their features, but also in their purpose and weight in the framework of the right to social assistance. The article proves that traditional understanding of social services and assistance as rights of socially disadvantaged citizens, exercised when basic living needs are not met, is not only unsupported, but also contradicts the current legislation and main trends in its development.

It is argued that social support is the one thing that provides legal guarantees for actual implementation of the right to social assistance, because the monthly allowance continues to have the character of a subjective, material, public citizens' right. Despite the constant narrowing of the circle of entitled persons and the grounds for its receipt, the fact that a receivable for a certain amount of money is recognized and guaranteed by the state, characterizes the monthly allowance as a real right. The legislator recognizes the existence of objective need of funds, and regulates it as an essential element of the legal basis for exercising the right to social support. The state continues to directly provide social benefits and to purposefully build and maintain the system of state bodies, to prepare and train social workers in a way that ensures effectiveness in rapid identification of the need, the eligible entity, the type and content of allowance, and in limiting the misuse of social benefits.

The article shows that the approach to the state's obligations in the field of social services is based on a completely different philosophy. The legislator regulates an extremely wide range of objective needs, and respectively a large number of various social services which meet them. The state provides certain funds for the implementation of these social services as

delegated state activities, and provides them to municipalities to secure the activities financially. The state regulates minimum standards of social services, and creates legal guarantees for their provision and use within the relevant standards. It regulates specific forms of control over the activities of entities that provide social services, by introducing specific registration proceedings in respect of some providers, etc. What the state does not undertake as its commitment and does not settle as a public obligation for any particular body is the right to social services for citizens in need. The obligatory practice of the Supreme Administrative Court also identifies and points to this situation, stating that neither the Minister of Labour and Social Policy, nor the municipalities must provide social services in a way that ensures everyone in need has actual opportunity to use the service they need. The analysis shows that the legislator expands the circle of persons who can use the services, but at the same time introduces the principle of remuneration whilst providing them. This significantly changes the understanding of the social element in both the social support and in the social function of the state, placing these in the realm of the supply-and-demand principle, and not as a last resort for social and purely physical survival of citizens in dire need.

8/ The clause of probation period-problems, reality

The focus of this article is the probation period clause in employment contracts and the specific legal effects that this clause has on the legal relationship between the employer and employee. By comparing the probation period clause with the term and termination condition clauses, the fundamental differences of these three modalities of the employment contract are explored and explained. The paper dives into the possibility to establish simultaneously a probation period clause and a term of employment clause in the same contract, while also focusing on the practical challenges that such combination may give rise to. The paper argues in favor of the theory, that the probation period clause has three elements, further expanding on the legal limits to negotiating these three elements, as well as the legal consequences in the event of a breach. The criteria for identifying what classifies two employment positions as "identical", "similar" or "different" are enlisted in the context of the general prohibition for negotiating more than one probation period clause for two identical positions, between two identical parties in an employment relationship. The most common practical problems, arising out of the use of the probation period clause and the recent case law trends are explored in detail. Taking all of the findings into account, the paper finishes by giving specific recommendation for changes in the law that will overturn some case law interpretations,

creating a less prohibitive legislative regime and allowing a broader practical use of the probation period clause.

9/ Termination of the employment relationship based on the probation clause- Nature, Legal characteristic, Exercise

The focus of this article is the subjective right of the employer to unilaterally terminate the employment relationship based on the probation clause, negotiated in his favor. The analysis focuses on the legal basis for the exercise of the right; the holder of the right; the possibility of delegation of the right and the practical problems that could arise. The paper defends the theory that the probation period has a preclusive character, while at the same time addressing and explaining the possibilities for term suspension. Special attention is given to the legal grounds for term suspension, as well as the legal consequences that the laps of said grounds leads to. The subjective right of termination based on the probation period clause is compared with other rights to termination that the employer possesses, underlying the differences and the great freedom that the first gives. The paper provides a detailed exposition of the most common practical problems and the solutions proposed by the courts. Based on this analysis, the author gives specific propositions for changes in the acting law, which would help unify different case law interpretations, and facilitate an easier exercise of the subjective right to termination.

10/ On a few questions regarding the Internal rules for the worker's payment as a Non-state source of labor law

This article explores the nature and characteristics of one of the most common used in practice non-state sources of labor law – the internal rules for the worker's payment. In the context of numerous practical problems, the focus is put on the way of acceptance of the rules, the subject they regulate and their legal force. The paper pays attention to the correlation between the collective labor agreement and the internal rules for the worker's payment as separate and different normative regulators. It further explores examples of contradictions between the two non-state sources and the legal consequences therefrom, while defending the case that in case of contradiction the rules that best defend the worker's interest will apply. Finally, the author makes numerous suggestions for changes in the acting legislation, which cumulatively could contribute to a better interpretation and application of the legal regime.