CHAPTER 2. COMPARATIVE STUDY OF LEGAL REGULATION OF TERMINATION OF THE EMPLOYMENT CONTRACT IN CASE OF ONE-TIME GROSS BREACH OF WORK DUTIES

2.1. The Legal Background and History of the Legal Framework for Dismissal of the Employee in case of One-Time Gross Breach of Work Duties in Ukraine

Modern Ukraine undergoes a complex, socially contradictory stage of its development, characterized by transformational changes in all sectors of society. This modernization is accompanied by substantial difficulties and troubles caused by the occurrence of new challenges and threats, in particular, in the field of labour law.

Recently, the interpretation of law not only as a superstructure of a certain socio-economic basis, but also as an extremely important component of the culture of the people has become more widespread. Regarding evaluation of the concept of the public legal system development, O. Ya. Gurevich argues that the doctrine of formation in the practice of historians has become not a means of socio-historical analysis, but a limit: specific historical knowledge has been designed to confirm the truth of the philosophical and historical system. The scientific hypothesis by K. Marx

has been transformed into an infallible dogma [1]. The cultural approach means that law is not unique to a particular formation. It should be evaluated as retaining its role in defining many basic notions, principles, categories and concepts during the development of the people, the State. According to L. D. Vostroknutov, this is the reason for the growing interest in historical and legal study, which are not only of historical value, but also are a key to understand the patterns, nature and trends of law, which only partially disappear with changing social economic formations, and in many cases are transformed in the course of statehood [2]. Each stage of the civilization constitutes the unity of economic, political, cultural and social space, the so-called "interior of a certain era". The latter, according to V. Lukianets, is not an ontological constant. From time to time this space undergoes radical changes [3].

O. I. Reznik states that the historical and legal process is a special category of historical and legal knowledge, which expresses the continuous and infinite movement of law, duration and sequence of changes of qualitatively different periods, stages and phases in the occurrence, development and completion of legal events, phenomena, norms [4].

Ukraine's economy transfers to a market under search for the optimal model of the relationship between the worker and the employer. However, the government, focusing on the immediate goals, solves the current tasks in the field of labour mainly by administrative means, without reference to long-

[1] Gurevich, A. Ya. Th theory of formations and the reality of history. *Vopr. Filosofii*, no. 11, 1996: 31–43.

[2] Vostroknutov, L. D. *Genesis and development of legal provisions in the field of physical culture and healthy lifestyle of the Ukrainian people: From customary law to the legislation of the early twentieth century*. Ph.D.'s thesis. National University of Internal Affairs. Kh., 2003. 211 p.

[3] Lukyanets, V. *Science in the interior of postmodernism*. Filos. Dumka, no. 1, 2005: 3–22.

[4] Reznik, O. I. *Periodization of the historical and legal process: Conceptual aspects*. Ph.D.'s thesis. Odessa National Law Academy. O., 2008. 190 p.

term socio-economic, political and legal strategies. In this situation, one of the most difficult problems is overcoming stereotypes and illusions, in particular, those that exaggerate the role of the state, the capabilities of the planning system or excessive expectations of the market's ability to self-regulate labour and associated relations.

In this regard, the issue of the content and form of labour law provisions, their determinant functions and patterns of development are of particular interest. The process of forming new labour relationship requires new provisions. This is natural, because the content of law has been depending on the nature of changes in certain external factors. The study of legal concept development in the historical and legal aspect gives it a special thoroughness, because certain legal provisions have deep historical roots, moreover, change in the essence of law, its social nature depends, after all, on real specific historical conditions. A striking example of the historical and legal process is the development of legal regulation of termination of the employment contract in case of an employee's one-time gross breach of work duties.

According to 1893 Industry Statute [1], in enterprises, which are not managed personally by their owners or owned by several persons, companies or joint-stock companies, the duties of the owner are performed by a special person, appointed by the owner to manage the enterprise. The latter is obliged to inform the factory inspection or mining supervision, as appropriate, within 7 days about the appointment of the manager of the enterprise, about his replacement by a new person. Therefore, at that time in labour law a figure of the head ("manager") was already separated from the employer-owner. The responsibility

[1] Balabanov, M. (Eds.). *Factory laws: Collection of laws, orders and clarifications on issues of Russian industrial legislation*. K.: Pechat. delo, 1905. 140 p.

of the head (in the form of a fine) for breach of law on employing workers, in particular: for failure to record or incorrect record of settlement books (Art. 153); for late payment of wages, incorrect payroll, replacement of cash payments by in-kind or monetary surrogates (Art. 155); for improper application of disciplinary actions (Art. 154). Therefore, the factory law regarded the manager as a fairly independent figure, as fines for breach of this law were levied on him personally, and only when the manager did not pay the fine for 2 weeks, the penalty was sent to the owner (Art. 152). The owner's right to dismiss the manager was not limited by labour (factory) law, as the agreement between him and the manager was considered civil.

The regulation of the labour activity of the manager as an employee is not reflected in the Statute. Wherever employment, working conditions, etc. are revealed, only workers are mentioned. The same situation existed in the countries of Western Europe: labour legislation, which developed intensively at that time, did not apply to senior officials [1].

In the Statute under consideration, for the first time, the grounds for dismissal of an employee at the initiative of the employer were systematized and allocated in a separate provision (Art. 105). The manager of the factory or plant could terminate the employment contract with the employee in the following cases: a) his absence from work for more than 3 consecutive days or a total of more than 6 days a month without good reason; b) his absence from work for more than 2 consecutive weeks for good reasons; c) his being under investigation or trial on charges of criminal acts punishable by imprisonment; d) audacity or misconduct of the worker, if it threatens the property interests of the factory or the personal safety of any of the persons of the

[1] Tal, L. S. Labour contract. Civilistic research. Part 1: General teachings. Yaroslavl: Gubern. Pravleniia. 1913. 422 p.

factory management or persons supervising the work; e) detection of his contagious disease.

The grounds for dismissal such as audacity or misconduct of the worker should be recognized as the closest to the category "gross breach of work duties." In the late nineteenth century, M. D. Butovskii argued that while some people are embarrassed, feel trapped in the presence of those in power, people brought up in the spirit of reasonable discipline, behave with superiors completely effortlessly, performing all disciplinary subtleties reflexively. It is not difficult to understand that meticulous compliance with disciplinary requirements leaves no room for embarrassment or humiliation; on the contrary, any neglect of it, any reliance on the weakness or indulgence of the superior degrades the dignity of the subordinate [1].

The audacity and misconduct as a ground for termination of the employment contract were considered as the actions of the worker, threatening the interests of the factory. Such actions included: (a) careless handling of fire, (b) smoking tobacco and keeping matches, pipes and cigarettes in the factory or plant premises, specified, at the request of the manufacturers, in the mandatory resolutions issued by the Chief Institution, (c) damage or stoppage of machines due to negligence of workers, (d) disobedience to foremen, (e) workers' abusive words or threats to the factory management or supervisors, (f) workers' demand to remove the foreman [2].

The Labour Code of the RSFSR, prepared by a commission of the People's Commissariat of Justice with the participation of the People's Commissariat of Labour and the All-Ukrainian Central Executive Committee, was considered and

[1] Butovskii, N. D. *Essays on the Modern Officer Life*. St. Petersburg: N. K. Garshin, 1899. 215 p.

[2] Vasiliev, D. A. *Factory legislation of Russia at the end of the 19th – beginning of the 20th centuries*. Ph.D.'s thesis. Academy of Labour and Social Relations. M., 2001. 155 p.

approved-in-principle at a meeting of the Central Executive Committee on November 4, 1918. After a collective revision in December 1918, it was published without reconsideration in *The Collection of Laws and Orders of the Workers' and Peasants' Government of the RSFSR* and put into effect [1]. Since 27 January 1920, this legal document had been valid in Ukraine. According to Article 46 of the Code, the grounds of dismissal of the employee at the initiative of the employer included: a) full or partial liquidation of the enterprise, institution or farm, as well as the abolition of certain obligations or works; b) suspension of work for a period of more than one month; c) expiration of the term of performance of work, if it was temporary; d) obvious unfitness of the employee to work.

According to Article 47 of the LC of Ukrainian SSR of 1922 [2], the grounds for termination of the employment contract at the initiative of the employer are:

– complete or partial liquidation of the enterprise, institution or farm, as well as reduction of work in them;

– suspension of work for a period of more than one month for production reasons;

– detection of unfitness of the worker to perform the work;

– systematic non-fulfilment by the employee without good reasons of the obligations under the contract or the rules of internal labour regulations;

– the employee's commission of a crime directly related to his/her work in accordance with an enforceable court judgement, as well as his/her detention for more than 2 months;

– absence from work for more than 3 sequential days or a total of more than 6 days a month without good reason;

[1] Labour Code of the RSFSR (approved by Resolution of ACEC of 10 December 1918). *The Collection of Laws and Orders of the Workers and Peasants' Government of the RSFSR* No. 87–88, 1918. Art. 905.

[2] Labour Code Laws of the USSR (approved by Resolution of AUCEC of 02 December 1922). *The Collection of Laws of the USSR* No. 52, 1922. Art. 751.

– the employee's absence from work due to temporary disability after 2 months from the date of its beginning, and in case of temporary disability after pregnancy and childbirth, after 2 months over the established 4-month period.

In addition to the cases provided for by the general labour legislation, dismissal at the initiative of the employer was also carried out on the basis of special regulations.

Regulation on disciplinary liability by subordination, approved by the Resolution of the All-Ukrainian Central Executive Committee and the Council of People's Commissars of the USSR of 17 October 1928 [1], provided for that disciplinary measures, including dismissal, were applied to all officials if, due to minor misconduct of certain categories of employees, bodies and persons empowered to apply disciplinary measures, bodies of court, investigation, prosecutorial supervision or workers and peasants' inspection do not recognize the case as criminal.

Disciplinary actions were applied:

– in relation to members of local Soviets and executive committees, by the relevant Soviets and executive committees, as well as by all higher executive committees and their presidiums, the Council of People's Commissars of the USSR and the Presidium of the All-Ukrainian Central Executive Committee;

– in relation to members of the presidium of local executive committees, by higher executive committees and their presidiums, the Council of People's Commissars of the USSR and the Presidium of the All-Ukrainian Central Executive Committee;

– in relation to other officials, by the heads of relevant institutions or organisations, as well as persons and bodies in the chain of command.

[1] Regulation on disciplinary liability by subordination (approved by Resolution of ACEC and the CPC of the USSR of 17 October 1928). SU USSR No. 29, 1928. Art. 252.

Moreover, the framework of disciplinary legislation of the USSR and the Union Republics, approved by the Resolution of the CEC and the Council of People's Commissars of the USSR of 13 October 1929 [1], in relation to managers and other decision makers provided for dismissal for a one-time culpable failure to perform their work duties, taking into account the nature of functions performed by these persons.

The list of decision makers was initially established by the People's Labour Commissariats of the USSR and the Union Republics in agreement with the All-Union Central Council of Trade Unions and the Republican Soviet of Trade Unions, and later by the Presidium of the Supreme Council of the USSR. Thus, according to the Decree of the Presidium of the Supreme Council of the USSR in 1957, the responsible decision makers are:

– heads of enterprises, institutions, organizations, construction departments, farms, their deputies and assistants; managers (directors) of shops, public catering establishments, consumer service enterprises, bases and warehouses, their deputies (except for managers of shops, public catering establishments and warehouses who do not have employees under their authority);

– chief engineers, chief physicians, chief accountants (senior accountants where there are no chief accountants), their deputies; chief designers, chief mechanics, chief electricians and other chief specialists;

– heads of workshops (laboratories and workrooms as workshops); senior masters and masters; construction site supervisors and senior contractors; heads (managers) of departments at enterprises; heads of production sites and services; foresters in forestry;

[1] Decree of the Presidium of the Supreme Council of the USSR on approval of the Regulation on the procedure for the consideration of labour disputes of 31 January 1957. *Vedom. Verkhov. Soveta SSSR*, no. 4, 1957. Art. 58.

– heads of departments, divisions and other similar subdivisions in ministries, government agencies, institutions of Union, republican, regional and oblast status, their deputies; managers of departments of executive committees of district and city Soviets of workers' deputies;

– editors-in-chief and their deputies; executive secretaries of editorial offices;

– teaching staff of higher educational institutions and employees of research institutions, whose positions are replaced by competition;

– prosecutors, assistants of prosecutors, senior investigators, investigators;

– elected employees holding paid positions;

– instructors, inspectors, managers of trade union departments;

– artists and other creative workers of theatres, ensembles, orchestras, choirs, philharmonics and other concert organizations, whose positions are replaced by competition.

All officials who held positions as a result of the elections were also liable by subordination. All other employees were subject to liability in the manner prescribed by the rules of internal regulations and the penalty tables attached to them.

Disciplinary punishment in the chain of command could not be imposed later than one month from the date of detection of the misdemeanour, and in specially established cases, from the date of termination of the criminal case. At the same time, such a penalty was not imposed in any case later than 6 months from the date of the misdemeanour. This period did not include the time of the criminal proceedings. An explanation was required from the person prosecuted prior to disciplinary action. A reasoned decision to impose a penalty was immediately notified to this person, and after the entry into force it was announced at the institution or

enterprise whereby the employee was in an employment relationship. Dismissals for elected officials were made in the form of their recall by decision s of the bodies that elected them.

The imposition of a disciplinary action in the chain of command did not become an obstacle to the prosecution regarding the same breach. But if such a penalty has not yet been enforced, the latter has been suspended pending a criminal case.

The decision to impose a disciplinary action in the chain of command within two weeks could be appealed by the person on whom the sanction was imposed. Complaints were submitted directly to a higher official or body against the official or body that imposed the penalty. Decisions on complaints were considered final and reviewed only under the supervision of higher authorities.

According to special laws of the USSR and the Union Republics, certain categories of workers (workers and peasants' militia, administrative and military staff of places of imprisonment, security of roads of the People's Commissariat of Railways, security of enterprises and buildings of special state importance, etc.) and certain types of disciplinary misconduct (for example, breach of technical rules that caused events related to railway traffic by railway workers, etc.) could be a deviation from the above rules of liability in the chain of command.

The Resolution of the CEC and the Council of People's Commissars of the USSR of July 7, 1932[1] "On the liability of employees of institutions and the administrative apparatus of economic bodies for breach of the rules for the general and fire protection of office buildings and premises and the rules for storing office documents" established that in case

[1] Resolution of the CEC and the CPC of the USSR of 13 October 1929 on the Basics of Disciplinary Legislation of the USSR and Union Republics. *SZ USSR*, no. 75, 1929. Art. 723.

of one-time gross breach of work duties guilty employees of these institutions and the corresponding administrative apparatus of economic bodies could be discharged.

Disciplinary actions are imposed no later than 10 days from the date of detection of the misdemeanour. Prior to this, the employee is required to provide written or oral explanations. In case of non-receipt of them within 3 days, the administration has the right to impose a penalty. Taking a disciplinary action should consider: (a) the circumstances under which the breach was committed; (b) damage caused by the breach; (c) the employee's previous performance.

The imposed penalty could be appealed within 5 days from the date of its announcement directly to a higher official in relation to the official who imposed the penalty. The decision on the complaint was final and could not be reconsidered.

Dismissal for one-time gross breach of work duties also applied to certain categories of employees who were subject to disciplinary statutes. For example, a disciplinary action in the form of dismissal could be applied to those railway workers whose activities are related to the movement of trains and passenger service, if such employees have endangered the safety of traffic regulations in passenger service (para. 20 of the Statute on discipline for railway transportation employees of the USSR, approved by the Resolution of the Council of Ministers of the USSR of 31 July 1964 [1]).

Para. 26 of the Internal Labour Regulations for workers and employees of the coal industry of 8 February 1957 allowed the administration to dismiss engineers, workers and employees of the coal and shale mines operating or under construction in case of gross breach of safety rules [2].

[1] Resolution of Council of Ministers of the USSR on the approval of the Statute on discipline for railway transportation employees of the USSR No. 636 of 31 July 1964. *SP USSR*, no. 13, 1964. Art. 91.

[2] Mishutin, A. N. (Ed.). *Commentary on labour legislation*. 2nd ed. M.: Yurid. lit., 1967. 856 p.

According to Art. 106 of the Fundamentals of Labour Legislation of the USSR and the Union Republics[1], adopted on 15 July 1970, one-time gross breach of work duties by an employee, subject to disciplinary responsibility in the chain of command was recognized as a special ground for termination of the employment contract on the initiative of the administration of the enterprise, institution, organization. The same wording was later transferred to para. 1 of Part 1 of Art. 41 of the LC of the USSR. During the period of temporary incapacity for work, as well as the employee's leave, his/her dismissal on this ground was not allowed.

The categories of employees, subject to disciplinary liability in the chain of command were determined by List No. 1 of Appendix No. 1 to the Regulations on the Procedure for Considering Labour Disputes, approved by the Decree of the Presidium of the Supreme Council of the USSR of 20 May 1974 . Such employees included:

– heads of enterprises, institutions, organizations, their deputies and assistants; managers (directors) of shops, public catering establishments, consumer service enterprises, bases, their deputies (except for managers (directors) of shops, public catering establishments, consumer service enterprises, who do not have employees under their authority);

– chief engineers, chief physicians, chief accountants (senior accountants, in the absence of chief accountant position), their deputies; chief designers, chief mechanics, chief electricians and other senior specialists of the enterprise; legal advisers appointed by the next higher authority;

– heads of workshops and their deputies, heads (administrators, managers) of departments, services, sections, productions, farms and heads of other structural

[1] Fundamentals of the Legislation of the USSR and the Union Republics on Labour (approved by Law of the USSR No. 2-VIII of 15 July 1970). *Vedom. Verkhov. Soveta SSSR*, no. 29, 1970. Art. 265.

subdivisions of enterprises, who have subordinates, as well as organizations that enjoy the rights of a public production enterprise; directors of creative and production-creative associations, film studios, film directors; masters; chiefs of construction sites and senior executors of works of construction organizations; warehouse managers who have employees under their authority; foresters;

– heads of departments, divisions (divisions in departments) and other similar subdivisions in ministries, government agencies, institutions and organisations of Union, republican, regional and oblast status, their deputies; managers of departments of executive committees of district and city Soviets of workers' deputies;

– editors-in-chief and their deputies; executive secretaries of editorial offices; managers of editorial offices, departments and chief artists of publishing houses; managers of editorial offices, chief and responsible issuers, chief artists, reviewers of TASS main editions; managers of departments, commentators and reviewers of the main editorial offices of radio and television;

– prosecutors, their deputies and assistants, investigators;

– elected employees holding paid positions;

– district inspectors and engineers-inspectors of the State Mining Inspectorate of the USSR; senior public inspectors at the Autonomous Republic, regions, oblasts and district public inspectors of fishery protection bodies, senior public inspectors from conventional fisheries;

– directors of directorates, department administrators, managers of agencies, referents, inspectors, foreign correspondents, guides-translators, translators, managers of service bureaus, translators of service bureaus, inspectors-acquirers of organizations of the Main Department for Foreign Tourism under the USSR Council of Ministers;

– employees with diplomatic ranks, diplomatic couriers, referents of the Ministry of Foreign Affairs of the USSR;

– employees of central, republican, regional, oblast, city (in cities of oblast and republican subordination) public organizations, approved for the position by a collegial body;

– employees of the Main Customs Department of the Ministry of Foreign Trade of the USSR and other customs institutions of the USSR who have personal ranks.

In Soviet times, Chapter XV "Labour Disputes" of the LC mentions the category of "explicit breach of law." According to Art. 238 of this Code, the court imposes on an official guilty of unlawful dismissal or transfer of an employee to another job, the obligation to compensate the damage caused to the enterprise, institution, organization in connection with payment for the period of forced absence or the period of this employee's performance of lower paid work. Therefore, this obligation is imposed if the dismissal or transfer was a clear breach of law. According to para. 25 of the Resolution of the Plenum of the Supreme Court of the USSR "On the application by courts of legislation regulating the conclusion, amendment and termination of an employment contract" no. 3 of 26 April 1984[1], the notion "explicit breach of law" is dismissal of:

– the chairman of the group of people's control of the enterprise or his transfer by way of disciplinary action to lower-paid work without the consent of the district, city, district committee of people's control in the city;

– an employee without the consent of the trade union committee or on grounds not provided by law;

– a people's deputy or his/her transfer for a disciplinary reason to a lower-paid job without the consent of the relevant Council, and between sessions, of the Executive Committee of the Council of People's Deputies or the Presidium of the Verkhovna Rada;

[1] Resolution of the Plenum of the Supreme Court of the USSR on the application by courts of legislation regulating the conclusion, amendment and termination of an employment contract No. 3 of 26 April 1984. *Biul. Verkhov. Suda SSSR*, 1984. Art. 329.

– the head of the people's control group of the enterprise or its transfer for a disciplinary reason to lower-paid work without the consent of the district, city, district in the city committee of people's control;

– women in cases provided by law, when the administration was aware of the existence of circumstances that preclude the possibility of their dismissal;

– workers and officials under the age of 18 without the consent of the district (city) commission on underage persons;

– as well as transfer to another permanent job without the consent of the employee, etc.

Moreover, the involvement of an official, by whose order the employee was illegally dismissed or transferred, in the case by the third party as the defendant had to be decided, as a rule, by a judge in preparing the case for trial, which does not rule out consideration of the issue in court. Such involvement of the official does not deprive him of the right to act on the case as a representative of the defendant.

In the Law of Ukraine "On Amendments to the Code of Labour Laws of the Ukrainian SSR during the transition to a market economy" adopted by the Verkhovna Rada of Ukraine on 20 March 1991, the legislator abandoned the above evaluative category, and Art. 238 of the LC was worded as follows: "The court imposes on an official guilty of unlawful dismissal or transfer of an employee to another job, the liability to reimburse damages caused to an enterprise, institution, organization in connection with payment for forced absence or for the performance of lower paid work. This liability is imposed if the dismissal or transfer is carried out with a clear breach of law or if the owner or his authorized body has delayed the execution of the court's decision to reinstate the employee" [1].

[1] Law of the USSR on amendments to the Code of Labour Laws of the Ukrainian SSR during the transition to a market economy No. 871-XII of 20 March 1991. *Vidomosti Verkhovnoi Rady USSR*. Art. 267.

In many sectors of the national economy, according to statutes of discipline, adopted in the 70–80s of the twentieth century, a special ground for termination of the employment contract was the commission of a gross breach of work duties.

For example, the Statute on Discipline for workers employed in hazardous underground conditions, approved by the Resolution of the Council of Ministers of the USSR No. 974 of 30 November 1976 [1], required the employee:

– to know his/her job well, to perform his/her duties accurately and in a timely manner, to show the necessary initiative, to constantly improve business skills;

– to know and strictly adhere to the rules and provisions for safe work, rules of technical operation, industrial sanitation, fire protection, instructions on labour protection, as well as job descriptions;

– to duly pass examinations on rules, provisions and instructions on safe conducting of works;

– follow the instructions of supervisory authorities;

– to strictly adhere to the procedure for timekeeping of descent to underground works and departure (exit) from these works;

– to systematically examine workplaces and equipment and take measures to immediately eliminate the identified breach of rules, regulations and instructions for safe work;

– to be at work in special clothes and to use means of individual protection;

– to stop work in the event of dangerous conditions, to immediately notify the supervisor, and in case of accident to act in strict accordance with the plan to eliminate the accident;

– to take due care of property;

[1] Resolution of the Council of Ministers of the USSR on approval of the Statute on discipline for workers employed in hazardous underground conditions No. 974 of 30 November 1976. *SP SSSR*, no. 1, 1977. Art. 1.

– to increase productivity, to fulfil the established production norms (time norms), to achieve high quality indicators in work, etc.

The manager, in turn, is responsible for the state of discipline among subordinates and is obliged to properly organize the work of subordinates, set an example of conscientious performance of official duties, clearly give orders and instructions to subordinates and check their implementation.

If a disciplinary action in the form of dismissal can be applied to workers and employees for systematic non-fulfilment without good reason of the obligations imposed by the employment contract or the Statute on discipline of workers employed in particularly dangerous underground conditions, for truancy without good reason (including appearance at work in a state of intoxication), as well as for breach of safety rules and instructions for safe work, the dismissal is applied to managers even for one-time gross breach of work duties. In the sector under consideration, managers are:

– a director (head), his deputy and production assistant;
– a chief engineer, his deputy and assistant;
– a chief technologist, his deputy;
– heads of departments, such as production, technical, labour protection and safety, their deputies;
– the head and a chief engineer of the capital construction department, their deputies for mining works;
– a chief (senior) mechanic, power engineer, surveyor, geologist, hydrogeologist, their deputies, senior electrician;
– chiefs of shift, ventilation service, drilling and blasting service, their deputies and assistants;
– a chief (senior) dispatcher, dispatcher for mining operations;
– a surveyor, geologist, hydrogeologist;
– head of the mining workshop, his deputy and assistant;

– chief, mechanic and master of lifting;

– a site manager, his deputy and assistant, senior contractor, contractor, shift engineer, foreman, mechanic, power engineer, electrician, if they have employees engaged in work in particularly dangerous underground conditions.

According to the Statute on Discipline of Railway Transport Workers of the USSR, approved by the Resolution of the Council of Ministers of the USSR No. 748 of 7 August 1985 [1], guilty breach by an employee of discipline in the performance of work duties, as well as established rules of conduct in working premises and on the territory of railway transport enterprises, including passenger trains, even if it is not committed in duty status, is a disciplinary misdemeanour this breach does not entail criminal liability. For workers, directly involved in rail transport, the operation of escalators, the passenger service and the safeguarding of goods and facilities, a disciplinary action in the form of dismissal may be applied for one-time gross breach of (a) discipline that threatens traffic safety, human life and health; and (b) rules established for the carriage and passenger service and the safety of goods and facilities. Lists of gross breaches of the discipline that threaten traffic safety, life and health, and categories of workers dismissed without the consent of the trade union committee, should be approved by the Ministry of Railways upon the approval of the Central Committee of the union.

According to the Statute on Discipline of employees of the Ministry of Atomic Energy of the USSR, approved by the Resolution of the Council of Ministers of the USSR No. 390 of 2 April 1987 [2], failure or improper performance of his/her

[1] Resolution of the Council of Ministers of the USSR on approval of Statute on discipline of railway transport workers of the USSR No. 748 of 7 August 1985. SP SSSR, no. 24, 1985. Art. 123.

[2] Resolution of the Council of Ministers of the USSR on approval of Statute on discipline of employees of the Ministry of Atomic Energy of the USSR No. 390 of 2 April 1987. *SP SSSR*, no. 25, 1987. Art. 87.

work duties for reasons attributable to the employee, as well as the established rules of conduct in working premises and territory, even if the breach is not committed in duty status, is a disciplinary misdemeanour, if this breach does not entail criminal liability. Dismissal as a disciplinary action may be applied to an employee for one-time gross breach of discipline that threatens the safety of nuclear power plants and other nuclear power facilities or endangers human life and health. Lists of gross breach of discipline and categories of workers dismissed without the consent of the trade union committee are approved by the Ministry of Atomic Energy of the USSR in agreement with the Central Committee of the Trade Union of Power Plants and the Electrical Industry. Employees who have committed misdemeanour, which endangers the safety of trains, life and health of people, may, if required, be suspended from work by an official who performs administrative or control functions in the area, with immediate notification to the manager in charge. The notification must detail the reasons and circumstances that led to the dismissal of the employee.

According to para. 25 of the Statute on Discipline of workers and employees of ships supporting the navy, approved by the Resolution of the Council of Ministers of the USSR No. 32 of 9 January 1986[1], a disciplinary action in the form of dismissal may be applied for:

– systematic non-fulfilment by the worker or employee without good reasons of his/her work duties, if disciplinary or public sanctions have previously been imposed on him/her, as well as truancy (including the absence from work for more than 3 hours during a working day) without good reasons or appearing on working place in a state of intoxication;

[1] Resolution of the Council of Ministers of the USSR on approval of Statute on discipline of workers and employees of ships supporting the navy No. 32 of 9 January 1986. *SP SSSR*, no. 5, 1986. Art. 31.

– gross breach of discipline that threatens safe navigation, or endanger human life and health;

– committing during the stay abroad misdemeanour, incompatible with the honour and dignity of a citizen of the USSR, or breach of customs rules.

The dismissal of workers is conducted upon the approval of the trade union committee, except cases provided by the legislation of the USSR, as well as gross breach of discipline, that threatens safe navigation and human life and health. The list of gross breach of discipline, and categories of workers and employees dismissed without the consent of the trade union committee, should be approved by the Ministry of defence of the USSR upon the approval of the relevant Central Committee of the union.

In order to increase the efficiency of state customs control, strengthen the counteraction to smuggling and breaches of customs rules, required in all parts of state customs control high organization, vigilance, strict discipline and effectiveness, exemplary attitude of employees to performance of their duties, therefore, the Resolution of the Council of Ministers of the USSR of October 9, 1987 approved the Statute on Discipline of employees of the State Customs Control of the USSR[1]. A disciplinary action in the form of dismissal could be applied to the worker for gross breach of the procedure for the State Customs Control. The list of gross breach was approved by the General Directorate for State Customs Control under the Council of Ministers of the USSR upon the approval of the Central Committee of the union of public institution officials.

In order to improve the regulation of labour relations under the country's transition to a market economy, on 20 March 1991, the Supreme Council of the USSR amended

[1] Resolution of the Council of Ministers of the USSR on approval of Statute on discipline of employees of the State Customs Control of the USSR No. 1130 of 9 October 1987. http://www.lawmix.ru/docs_cccp/2511.

para. 1 of Art. 41 of the LC, according to which the owner or his authorized body has the right to terminate the employment contract only with managers of the enterprise in the case of their one-time gross breach of work duties. Since 18 February 1992 [1], according to Art. 233 of the LC of Ukraine, the district (city) people's courts directly considered labour disputes on the applications of the head of the enterprise, institution, organization (suboffice, representative office, branch, other separate division), his deputies, executives, elected, approved or appointed by public authorities and administration, as well as public organizations and other associations of citizens, on dismissal, change of date and formulation of the reason for dismissal, transfer to another job, payment for the period of the forced truancy and imposition of disciplinary actions.

According to Art. 43-1 of the LC of Ukraine, termination of the employment contract at the initiative of the owner or his authorized body without the consent of the trade union body is allowed in case of dismissal of the dismissal of the head of the enterprise, institution, organization (suboffice, representative office, branch, other separate division), his deputies, executives elected, approved or appointed to positions by public authorities and administration, as well as public organizations and other associations of citizens.

On 6 November 1992, the Plenum of the Supreme Court of Ukraine adopted Resolution No. 9 "On the consideration of labour disputes", which provided for in para. 27 that the court, deciding whether breach of work duties is gross, should proceed on the of nature of misdemeanour, the circumstances under which it was committed, and the damage caused by it (could be caused).

[1] Law of Ukraine on amendments and addenda concerning the consideration of individual labour disputes to the Labour Code of the Ukrainian SSR and recognition of certain legal regulations as repealed No. 2134-XII of 18 February 1992. *Vidomosti Verkhovnoi Rady Ukrainy*, no. 22, 1992. Art. 302.

The Law of Ukraine "On Amendments to the Labour Code of Ukraine concerning the procedure for dismissal of certain categories of employees" of 19 November 1993 [1] provided for the enlarged range of persons dismissed by the employer for one-time gross breach of work duties that include: the head of the enterprise, institution, organisation (suboffice, representative office, branch, other separate division), his deputies, chief accountant, his deputies, as well as officials of the revenue and duties bodies nominated for special ranks, and officials of central executive bodies implementing national policy in public financial control and price control.

On 17 October 2002, the Law of Ukraine "On Amendments to Articles 41 and 134 of the Labour Code of Ukraine" [2] singled out of one-time gross breach of work duties as an independent ground for termination of the employment contract a commission of guilty acts by this subject, as a result of which wages were paid late or in the amount lower than the statutory minimum wage.

Yu. V. Isaiev [3] argues that this was due to numerous breaches of wage payment frequency and the presence of arrears in recent months at enterprises of all forms of ownership. The analysis of the situation with debt repayment reveals that in addition to economic reasons, an important condition for the existence of this phenomenon is a subjective factor of the faulty acts of managers. V. I. Shcherbyna advocates this legal innovation because Part 4 of Art. 41 of the Constitution of Ukraine guarantees

[1] Law of Ukraine on amendments to the Labour Code of Ukraine concerning the procedure for dismissal of certain categories of employees No. 3632-XII of 19 November 1993. *Vidomosti Verkhovnoi Rady Ukrainy*, no. 49, 1993. Art. 461.

[2] Law of Ukraine on amendments to Articles 41 and 134 of the Labour Code of Ukraine No. 184-IV of 17 October 2002. *Vidomosti Verkhovnoi Rady Ukrainy*, no. 47, 2002. Art. 355.

[3] Isaiev, Yu. V. Special grounds for termination of the employment contract at the initiative of the employer. Ph.D.'s thesis. T. Shevchenko Kyiv National University. K., 2012. 213 p.

that no one may be unlawfully deprived of property rights. Property rights are unbreakable. All legal subjects, including employers, must strictly adhere to these requirements. Therefore, the inclusion of para. 1-1 of Part 1 of Art. 41 of the LC is a logical continuation of protecting the employee's right to receive wages for work performed within the time limits specified in the collective agreement [1].

Decree of the President of Ukraine No. 726/2012 of 24 December 2012 "On some measures to optimize the system of central executive bodies" initiated administrative reform [2]. According to this Decree, the Ministry of Revenue and Duties of Ukraine was established, and the State Customs Service of Ukraine and the State Tax Service of Ukraine were reorganized. In this regard, on 4 July 2013, in accordance with the Law of Ukraine "On Amendments to several legislative acts of Ukraine in connection with holding the administrative reform" [3], in paragraph 1 of part 1 of Art. 41 of the LC of Ukraine, the words "officials of customs bodies, state tax inspections, nominated for personal ranks" were replaced with the words "officials of the bodies of revenue and duties, nominated for special ranks in public financial control and price control."

During the years of Ukraine's independence, the statutes and regulations on discipline preserved the practice of Soviet times, that is, the use of the wording "one-time gross breach of work duties". For example, according to Art. 28 of the Disciplinary Statute of the Customs Service of Ukraine [4],

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[1] Shcherbyna, V. I. *Labour Law of Ukraine*. K.: Istyna, 2008. 384 p.

[2] Decree of the President of Ukraine on some measures to optimize the system of central executive bodies No. 726/2012 of 24 December 2012. *Ofith. Visn. Prezydenta Ukrainy*, no. 35, 2012. Art. 842.

[3] Law of Ukraine on amendments to several legislative acts of Ukraine in connection with holding the administrative reform No. 406-VII of 04 July 2013. *Vidomosti Verkhovnoi Rady Ukrainy*, no. 20–21, 2014. Art. 712.

[4] Law of Ukraine on Disciplinary Statute of the Customs Service of Ukraine No. 2805-IV of 06 September 2005. *Vidomosti Verkhovnoi Rady Ukrainy*, no. 42, 2005. Art. 467.

dismissal of a customs official can be in case of one-time gross breach, namely:

– for extortion or receipt of gifts, things, currency of Ukraine, foreign currency in connection with the performance of official duties, both during their performance and off-duty hours;

– for substitution, theft or intentional damage of items subject to customs control;

– for detention, seizure and acceptance for storage of objects, currency values without registration in the order prescribed by law;

– for disclosure of state secrets and confidential information owned by the state, legal or natural person, other secrets protected by law, loss or intentional tampering with material carriers of secret and confidential information, as well as transfer of weapons and special means of protection, customs support to third parties;

– for brutal or contemptuous treatment of citizens during the performance of official duties, humiliation of their honour and dignity.

Article 58 of the Disciplinary Statute of the Civil Defence Service [1] provides for that gross disciplinary misdemeanour is the fact of gross breach of discipline that does not involve features of criminal offense, such as:

– absenteeism without good reason;

– breach of the agenda established by the head of the body or unit of civil protection;

– use of alcoholic beverages or drugs during office hours, appearing on working place in a state of alcoholic, narcotic intoxication;

– breach of Statute's rules of service;

– loss of service certificate, official documents;

[1] Law of Ukraine on Disciplinary Statute of the Civil Defence Service No. 1068-VI of 05 March 2009. *Vidomosti Verkhovnoi Rady Ukrainy*, no. 29, 2009. Art. 398.

– non-fulfilment of orders and directives of superiors, which led to unpreparedness for actions on purpose and to disruption of tasks assigned to the body or department of civil defence;

– breach of legal provisions and other legal regulations, that resulted in damage or loss of the fixed property, equipment and technique, other material losses, as well as the damage to the health of the personnel of the body or unit in civil defence or to other persons;

– non-fulfilment of individual work plans by academic, academic teaching, teaching staff, postgraduate students, persons working for doctor's degree.

However, this Statute does not contain a provision requiring that a gross disciplinary misdemeanour is grounds for dismissal of members of the rank-and-file and command staff of civil defence bodies and units. This legal phenomenon is only mentioned in the legal regulation as follows:

a) in case of gross breach of service discipline, direct superiors in cases that do not allow delay, may suspend the rank-and-file and command staff from duties (Art. 61 of the Statute);

b) the decision of the superior to impose a disciplinary action on a subordinate for substantial gross disciplinary misdemeanour may be preceded by an official investigation ordered by the superior to clarify all the circumstances, as well as clarify the reasons and conditions that led to the disciplinary offense, the gravity of the offense and the amount of damage caused (Article 83 of the Statute).

A different approach is enshrined in the Regulations on Discipline of railway transport workers, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 55 of 26 January 1993[1]. According to its paragraph 15,

[1] Resolution of the CMU on approval of Regulations on Discipline of railway transport workers No. 55 of 26 January 1993. *ZP Ukrainy*, No. 4-5, 1993. Art. 71.

disciplinary action in the form of dismissal applies to employees for breach of discipline, the effects of which threaten the safety of trains, life and health of citizens, as well as to the categories of employees specified in the annex to this legal regulation. This Regulation contains a list of types of disciplinary breaches, the effects of which threaten the safety of trains, life and health of citizens, as well as categories of employees to whom disciplinary action is applied in the form of dismissal, namely:

– appearance (presence) at work in a state of alcohol, drugs or other intoxication. This breach concerns: locomotive drivers and their assistants, drivers of fixed motor-rail vehicles, station duty officers, train dispatchers, senior duty officers (duty officers) of pointsman's box, senior electromechanics (electromechanics) of signaling, signaling arrangement, tracks track foreman, section foreman, level-crossing attendant, car inspectors, car repairmen inspectors, car repairman, train chiefs, conductors of passenger cars, train electricians, senior receivers (receivers) of cargo and luggage, train assemblers, train assemblers; car pointsman;

– signal passed at danger (irrespective of consequences) for reasons attributable to the locomotive driver, drivers of fixed motor-rail vehicles; this concerns: drivers of locomotives, drivers of fixed motor-rail vehicles;

– departure of a train for an occupied track section or its acceptance on an occupied track, departure of a train on an unprepared route, throwing of points under a train; this concerns: station duty officers, train dispatchers, senior duty officers (duty officers) of pointsman's box, senior electromechanics (electromechanics) of signaling;

– non-protection with stopping signals of track work sites; this concerns: supervisors, track foremen, section foremen;

– collision at a crossing equipped with an automatic level crossing safety installation and a level-crossing gate, due

to equipment failure or breach of work duties by a level-crossing attendant; this concerns: senior electromechanics (electromechanics) of signalling, track foreman, level-crossing attendant;

– allowance of cases of erroneous indication of the clear signal instead of the restrictive one at the wayside signal due to unsatisfactory maintenance of the signalling equipment; this concerns: senior electromechanics (electromechanics) of signalling;

– non-compliance with specifications and rules of cargo fastening, which led to breach of operation safety requirements; this concerns: senior receivers (receivers) of cargo and luggage;

– fire in passenger cars due to negligence in their work duties; this concerns: train supervisors, train electromechanics, passenger car attendant.

Therefore, only appearance at work in a state of alcohol, drugs or other intoxication is provided for by para. 7 of Art. 40 of the LC as the general basis for termination of the employment contract at the initiative of the employer. Other grounds for dismissal are specific and apply only to the categories of railway workers prescribed by law.

The results of a comprehensive study in the second sub-section of the monograph enable to make conclusions of significant theoretical and applied significance.

1. Ukraine undergoes transition to a market economy in terms of finding the optimal model of employee-employer relationship. However, the State authority, focusing on the immediate goals and current objectives in the field of labour, solves them mainly administratively, without imposing long-term socio-economic, political and legal strategies. In this state of affairs, one of the most difficult problems is overcoming stereotypes and illusions, in particular, exaggeration of the State function, the planning and command system capabilities or excessive

expectations of the market's ability to self-regulate labour and associated relations.

In this regard, the issue of the content and form of labour law provisions, their determinant functions and patterns of development are of particular interest. The process of forming new labour relationship requires new provisions. This is natural, because the content of law has been depending on the nature of changes in certain external factors. The study of any legal concept development in the historical and legal aspect gives it a special thoroughness, because certain legal provisions have deep historical roots, moreover, change in the essence of law, its social nature depends, after all, on real specific historical conditions.

2. The factory law regarded the manager (administrator) as a fairly independent figure. For example, fines for breach of this law were levied on him personally, and only when the manager did not pay the fine for 2 weeks, the penalty was sent to the owner. The latter's right to dismiss the manager was not limited by law, as the agreement between him and the manager was considered civil. The regulation of the labour activity of the manager as an employee is not reflected in law. Wherever employment, working conditions, dismissal, etc. are revealed, only workers are mentioned.

3. The formation and development of legal regulation of the termination of the employment contract in case of worker's one-time gross breach of work duties includes the periods as follows:

1st (1928–1969) the stated ground for dismissal is launched for managers and other decision makers, taking into account the nature of their work function. The lists of decision makers were initially established by the People's Labour Commissariats of the USSR and the Union Republics upon the approval of the All-Union Central Council of Trade Unions and the Republican Soviet of Trade Unions, and later by the Presidium of the Verkhovna Rada or the Council of Ministers.

At different times, these employees include not only the heads of enterprises, their deputies and assistants, chief engineers, chief physicians, chief accountants, heads of workshops, masters, construction site supervisors, also but prosecutors and investigators; teaching staff of higher educational institutions and employees of research institutions, elected employees, instructors, inspectors, managers of trade union departments; artists and other creative workers. In the 60s of the twentieth century, dismissals for one-time gross breach were applied to certain categories of employees, subject to the regulations and statutes on discipline (railway workers, workers and employees of the coal industry).

The dismissal did not become an obstacle to the prosecution of a guilty person regarding the same breach. It could be appealed in the chain of command directly to the next higher authority or a higher official. All decisions on complaints were considered final and reviewed only under the supervision of higher authorities.

2nd (1970–1990) – for the first time, the Principles of Labour Legislation of the USSR and the Union Republics and in the LC of the USSR provide for one-time gross breach of work duties by employee, subject to disciplinary liability in the chain of command, as a separate special ground for their dismissal. The categories of employees, subject to disciplinary liability in the chain of command were determined by the special List, approved by the Presidium of the Supreme Council of the USSR. Compared to the previous period, this List additionally included employees with diplomatic ranks, as well as diplomatic couriers, referents of the Ministry of Foreign Affairs of the USSR, employees of public organizations, approved for the position by a collegial body; employees of the Main Customs Department of the Ministry of Foreign Trade of the USSR and other customs institutions of the USSR who have personal ranks, employees of the Main Department for Foreign Tourism, inspectors

and engineers-inspectors of the bodies of the State Mining and Technical Supervision, etc. However, teaching staff of higher educational institutions and employees of research institutions, as well as artists and other creative workers are excluded from the scope.

The current LC, together with the category under study, provides for the term "explicit breach of law." An official guilty of unlawful dismissal of an employee with explicit breach of law is required to compensate the damage caused to the enterprise, institution, in connection with payment for the period of forced truancy. The explicit breach of law was dismissal of: (a) an employee without the consent of the trade union committee or on grounds not provided by law; (b) a people's deputy without the consent of the relevant Council, and between sessions, of the Executive Committee of the Council of People's Deputies or the Presidium of the Verkhovna Rada; (c) the head of the people's control group of the enterprise without the consent of the district, city, district in the city committee of people's control; (d) women in cases provided by law, when the administration was aware of the existence of circumstances that preclude the possibility of their dismissal; (e) workers and officials under the age of 18 without the consent of the district (city) commission on underage persons.

In the 70's and 80's of the twentieth century, much more sectors of the national economy adopted Statutes on discipline. The latter provided for that the special ground for termination of the employment contract was committing gross breach of work duties. This ground concerns employees of the State Customs Control, workers employed in particularly dangerous underground conditions, employees of the Ministry of Atomic Energy, workers and employees of ships supporting the navy, etc. During the period of temporary disability, as well as the stay of employees on leave, their dismissal on this basis was not allowed.

3rd (1991 until present) – on March 20, 1991, the owner or his/her authorized body was given the right to terminate the employment contract with the heads of the enterprise in case of one-time gross breach of their work duties. Subsequently, this right became modern and extended to the heads of enterprises and their separate divisions, the heads, deputies, chief accountants, their deputies, as well as to the officials of the revenue and duties bodies nominated for special ranks, and officials of central executive bodies implementing national policy in public financial control and price control. A commission of guilty acts by the head of the enterprise as an independent ground for termination of the employment contract, as a result of which wages were paid late or in the amount lower than the statutory minimum wage, was singled out of one-time gross breach of work duties by this subject.

Legislation, statutes, and regulations on discipline continue to use the construction "one-time gross breach of work duties". Termination of the employment contract on this ground is carried out without the consent of the elected body of the primary trade union organization (trade union representative).

Labour disputes on the applications of the head of the enterprise and their deputies on dismissals are directly considered in the district (city) courts.

2.2. Foreign experience of legal regulation of employee dismissal in case of one-time gross breach of work duties

At the turn of the 80–90s of XX century, socio-economic transformations in many countries in general, and especially in Europe, were focused on the actual implementation of democratic principles of society with

a market economy. They caused an urgent need for the formation and development of independent, qualitatively new legal systems in each country [1]. Since the reform or modernization of any social object require its potential for positive development in its basic structure and exclude any disintegrating socio-cultural matter that has not withstood the test of time, most countries have chosen to modernize the inherited legal system, transformation of all its components and interrelations of the latter: legal culture, consciousness, ideology, legal science, legal policy, legal practice, etc. In almost all post-socialist States, the processes of democratic society transformation were aimed primarily at the formation of an economy with a developed labour market. An organic component of these reform processes was the formation of a qualitatively new for post-socialist societies legal regulation of labour and associated relations. This, in turn, required not only the improvement of inherited socialist legal systems or the quantitative replacement of legal regulations, but the adoption of conceptually new ones.

The deep and inevitable democratic transformations in Ukraine also pose a challenge of restructuring and significantly increasing the level of efficiency and quality of legal regulation of labour relations on their basis. Their successful implementation is impossible without taking into account the best foreign standards. At the present stage, the relevancy of the study in the field of comparative law is associated primarily with the expansion of international scientific contacts and the need to determine the patterns of development of national law concepts and provisions.

I. Sabo emphasises that the comparative method application in legal science is essential, because different legal systems affect each other. Analysis of such interaction

[1] Tkáčová, D. Selected problems of banking restructuring in the Slovak Republic. BIATEC, no. 1, 1999: 8–10.

enables to understand the development of both individual legal systems and individual sectors of law and legal institutions. According to the scientist, comparative law study cannot be considered an independent science, though it is theoretically oriented [1]. Comparative law study is not just a comparison of the legal systems of different states, but a study of the law development patterns of the latter, the determination of the general and special, common and opposite in these systems. An important task is to study the gradual progressive movement of legal provisions, which corresponds to their development patterns, as well as reverse progressive processes that act in opposition to these patterns.

According to S. S. Alekseev, the comparative legal method enables not only to identify opposites, differences and features of succession of legal systems of different historical types and legal families, but to formulate general theoretical positions and constructions, to emphasize patterns of their functioning and development that consider specificities of the systems of different social structures, epochs, countries [2].

The Labour Code of the Republic of Belarus[3] utilises the category of "one-time gross breach" in several cases. For example, in accordance with its paragraph 9 of Art. 42 an employment contract concluded for an indefinite period, as well as a fixed-term employment contract before its expiration may be terminated by the employer in the case of one-time gross breach by an employee of labour protection rules, causing injury or death of others. The legislator proceeds from the fact that the employee has not performed the duty

[1] Sabo, I. Comparative Law. In *Criticism of the modern bourgeois. theory of law*. V. A. Tumanova (Ed.). M.: Progress, 1969: 165–207.

[2] Alekseev, S. S. *General theory of law*. In 2 vols. Vol.1. M.: Yurid. lit., 1981. 359 p.

[3] Labour Code of the Republic of Belarus (approved by Law of Resp. of Belarus No. 296-C of 26 July 1999). *Nats. Reestr prav. actov Resp. Belarus*, no. 80 (2/70), 1999.

to comply with the requirements established by regulations on labour protection and safe work. According to Article 232 of this Code ("Duties of the employee on labour protection"), the employee is obliged:

– to comply with the requirements of labour protection, as well as the rules of conduct in the organization, in production, ancillary premises and staff facilities;

– to comply with the provisions and obligations of labour protections provided for in the collective agreement, contract, employment contract, job responsibilities and internal labour regulations;

– to correctly use the personal protective equipment provided to him, and in case of non-receipt immediately notify the direct supervisor;

– in the established manner to pass preliminary, periodic and extraordinary (during aggravation) medical examinations, preparation (training), retraining, internship, instruction, raising of professional skill and check of knowledge on labour protection;

– to assist and cooperate with the employer in ensuring healthy and safe working conditions, immediately notify his/her immediate supervisor or other official of the employer about the malfunction of equipment, tools, devices, vehicles, protective equipment, aggravation;

– to immediately inform the employer of any situation that threatens the life and health of workers and others, of an accident that occurred at work, to assist the employer in taking measures to provide the necessary assistance to victims and deliver them to health facilities;

– to perform other duties prescribed by law on labour protection.

Breach of labour protection rules can be in the form of: non-compliance with the rules, improper compliance with them, the commission of actions expressly prohibited by the rules. According to the authors of the Commentary to the

LC of the Republic of Belarus, assessment of the gravity of breach of labour protection rules should take into account: (a) the degree of the employee's guilt, (b) the presence of the victim's guilt, (c) the circumstances under which the breach was committed; (d) the obvious threat to the life and health of others. In this case, the employer should not take into account whether this breach is committed for the first time, whether the employee has been previously subject to disciplinary action, what is his marital status, etc. [1].

According to para. 1 of Art. 47 of the LC under consideration, one of the additional grounds for termination of the employment contract at the initiative of the employer is one-time gross breach of work duties by the head of the organization (separate unit), his/her deputies, chief accountant and his/her deputies. According to Art. 46 of the Civil Code of this Republic [2] organizations are considered legal entities. Moreover, it does not matter whether the legal entity is commercial or non-commercial. According to Art. 51 of this CC, separate units can be representative offices and suboffices. At least they are not legal entities but the legal entity that created them endow them with the relevant property and approve with the provisions to follow in their activity. Heads of representative offices and suboffices are appointed by the legal entity and act on the basis of its power of attorney.

While the construction "gross breach of work duties" is evaluative, some legal regulations contain rules for its use. For example, para. 2 of the Decree of the President of the Republic of Belarus "On granting legal entities a deferral of payment of arrears of taxes and penalties" No. 292

[1] Glovanova, V. G., Semenkova, V. I. (Eds.). *Commentary on the Labour Code of the Republic of Belarus: Article-by-article application of sample documents*. Minsk: Dikta, 2009. 1328 p.

[2] Civil Code of the Republic of Belarus (approved by Law of Republic of Belarus No. 218-C of 7 December 1998). *Vedom. Nats. Sobr. Resp. Belarus*, no. 7–9, 1999. Art. 101.

of 13 August 1996[1] contains the following prescription: "To prohibit from the date of entry into force of this Decree the accrual and payment of all types of bonuses to managers and chief specialists (their deputies) of legal entities that have arrears of payments to the budget, formed from 1 January 1996, until full repayment of arrears to the budget by these legal entities. To establish that non-compliance with this prohibition is gross breach of work duties by the head, chief accountant (their deputies) of the legal entity. In contracts concluded with the heads of legal entities, the employer is obliged to provide for the personal responsibility of the head for the breach of the prohibition..., including the termination by the employer of the contract before its expiration. To establish that the prohibition... does not apply to heads and chief specialists (their deputies) of legal entities, who in accordance with the decisions of the President of the Republic of Belarus, regional and Minsk City Councils are granted deferral (instalment) of repayment of arrears of payments to the budget, accrued economic sanctions and fines in case of timely ongoing payments to the budget."

Paragraph 5 of Decree of the President of the Republic of Belarus "On additional measures to improve labour relations, to strengthen labour and executive discipline" No. 291 of 26 July 1999[2] enshrines, "To consider non-compliance with the Constitution of the Republic, Decisions of the President of the Republic of Belarus, laws of the Republic of Belarus, Resolutions of the Council of Ministers of the Republic of Belarus and court rulings in the performance of official duties as gross breach of work duties..

[1] Decree of the President of the Republic of Belarus on granting legal entities a deferral of payment of arrears of taxes and penalties No. 292 of 13 August 1996. *Collection of Presidential decrees and Resolutions the CM of the Republic of Belarus*, no. 23, 1996. Art. 566.

[2] Decree of the President of the Republic of Belarus on additional measures to improve labour relations, strengthen labor and executive discipline No. 29 of 26 July 26 1999. *Nats. Reestr prav. actov Resp. Belarus*, no. 58 (1/512), 1999.

Decree of the President of the Republic of Belarus "On strengthening the requirements for managers and employees of organizations" No. 5 of 15 December 2014[1] established that the heads of organizations under their personal responsibility are required to ensure:

– production and technological, executive and labour discipline;

– maintenance of production buildings (premises), equipment and devices in accordance with the established requirements;

– proper working conditions for employees; consolidation in job (work) instructions of employees taking into account the specifics of their job function duty to comply with technological regulations and standards for production (works, services), with production process requirements, manufacturing technology of goods (works, services), as well as cleanliness and tidiness in the organization and directly in the workplace.

Gross breach of work duties, which entail the unconditional disciplinary liability of the head of the organization, up through and including dismissal, is: (a) failure to comply with the above requirements; (b) concealment (substitution) of grounds for dismissal of the employee if there are grounds for his/her dismissal for committing guilty acts; (c) other unlawful actions (inactivity) of the head, established by law. Cases of gross breach of work duties also include the facts of failure to prevent damage, disclosure of State and official secrets, and others.

A. A. Voityk argues that breach of the rules of internal labour regulations by officials is not the considered ground for termination of the employment contract, but an independent basis for the application of disciplinary actions

[1] Decree of the President of the Republic of Belarus on strengthening the requirements for managers and employees of organizations No. 5 of 15 December 2014. http://president.gov.by/ru/ official_documents_ru/view/dekret-5-ot-15-dekabrja-2014-g-10434.

to the employee[1]. According to para. 1 of Art. 47 of this LC, a dismissal of the employee is not a disciplinary action, and therefore the procedure and terms of bringing him/her to disciplinary liability in this case are not applied.

Another additional ground for dismissal of the head of the organization is his/her breaches of wage payment frequency and procedure without good reason and (or) assistance (para. 1 and 2 of Article 47 of the LC). Wage payment is required to be carried out frequently on the days specified in the collective agreement, contract or employment contract, but at least 2 times a month. Other wage payment frequency can be determined by law for certain categories of employees. If wage payment frequency coincides with weekends, public holidays, payment is required to be carried out the day before.

In the labour legislation of the Russian Federation, the construction under analysis is also used frequently. In particular, according to para. 6 of Art. 81 of the LC of the RF, an employment contract can be terminated at the initiative of the employer in cases of one-time gross breach by the employees of their work duties, such as:

a) truancy, i.e. his/her absence from the work without reasonable excuse throughout the working day (shift) regardless of its duration, as well as absence from work without reasonable excuse for a period longer than four consequent hours during a working day (shift);

b) appearing on working place (at his/her workplace or on the territory of the organization or facility, where on behalf of the employer he/she is required to perform employment function) in a state of alcoholic, narcotic or other intoxication;

c) disclosure of a secret (State, commercial, official etc.), protected by law, that has been learned by him/her because

[1] Semenkova, V. I. (Ed.). *Labour Law*. 3rd ed. Minsk: Amalfeia, 2006. 784 p.

of his/her performance of work duties, including personal data on another worker;

d) commission on working place of a theft (including minor theft), embezzlement or intentional damage or destruction of property, established as such under court verdict, entered in force, or decision of a judge, body, official, authorized to consider cases of administrative offenses;

e) worker's breach of labour protection regulations established by the commission or the commissioner for labour protection if this breach has coursed disastrous consequences (accident at work, accident, wreck, disaster) or could certainly lead to these consequences.

These grounds for dismissal can be applied to all categories of employees, regardless of their position or industry affiliation of the enterprise whereby they work.

One-time gross breach by the head of the organization (suboffice, representative office), his/her deputies of their work duties is the ground for termination of the employment contract at the initiative of the employer according to para. 10 of Art. 81 of the LC of the RF.

According to the authors of the Commentary to the LC of the RF edited by S. M. Baburin, these employees are on a special position in the enterprise in the organization: they are endowed with administrative functions to manage the labour organization, to ensure production technology and safety. Therefore, any one-time gross breach (non-fulfilment) by them of work duties can lead to negative effects for the company [1].

The heads of other structural units (except suboffice, representative office) and their deputies, as well as the chief accountant of the organization may not be dismissed on the above grounds. However, the employment contract with

[1] Baburina, S. N. (Ed.). Commentary to the Labour Code of the Russian Federation (article by article). Scientific and practical. With explanations from official bodies and article-by-article materials. 2nd ed. M.: Kn. mir, 2013. 848 p.

them may be terminated for one-time gross breach by them of work duties in accordance with paragraph 6 of Art. 81 of this Code. According to para. 49 of the Resolution of the Plenum of the Supreme Court of the RF "On the application by the courts of the Russian Federation of the Labour Code of the Russian Federation" No. 2 of 17 March 2004[1] , the question of whether the breach is gross is decided by the court taking into account the specific circumstances of each case. At the same time, the employer is required to prove that it really occurred and was gross. Moreover, gross breach of work duties should also be considered as non-fulfilment by the above-mentioned persons of the obligations imposed on them by the employment contract, which could have caused damage to the health of employees or property damage to the organization. According to L. O. Chikanova, this can be breach of labour protection requirements, rules of register for tangible assets, statistical data garbling, excess of official authority or jobbery[2].

A ground for a dismissal cannot be non-performance of any actions that were not the responsibility of the head of the organization (suboffice, representative office) or his/her deputy.

A dismissal, under paragraph 10 of Art. 81 of the LC of the RF, is a disciplinary action, and therefore it is allowed no later than one month from the date of detection of a disciplinary misdemeanour without taking into account the time of illness of the employee and his/her leave. Such an action cannot be applied later than 6 months from the date of the misdemeanour, and according to the results of the examination, review of financial and economic activities or

[1] Resolution of the Plenum of the Supreme Court of the RF on the application by the courts of the Russian Federation of the Labour Code of the Russian Federation No. 2 of 17 March 2004. *Bul. Verkhov. Suda RF*, no. 6. 2004. Art. 486.

[2] Orlovskii, Yu. P. (Ed.). *Commentary to the Labour Code of the Russian Federation*. 5th ed. M.: Kontrakt: INFRA-M, 2011. 1456 p.

audit, no later than two years from the date of its commission. These terms do not involve the time of criminal proceedings.

According to Art. 341 of the LC of the RF termination of work in the mission of the Russian Federation abroad occurs in connection with the expiration of the period established when sending an employee to the relevant federal executive body or public institution or when concluding a fixed-term employment contract with him/her.

In addition, service abroad can be terminated early in case of one-time gross breach by an employee of work duties or of the regime requirements known to him/her at the conclusion of the employment contract. The possibility of a dismissal for one-time gross breach of work duties by certain categories of employees is provided for by the special legislation. For example, according to Art. 4 of the Statute on discipline of employees of organizations operating particularly radiation-hazardous and nuclear-hazardous production and facilities in the field of atomic energy use, approved by the Federal Law of the Russian Federation of 8 March 2011[1], a disciplinary misdemeanour, i.e. failure or improper performance for reasons attributable to the employee of the operating organization of the labour (official) duties assigned to him/her, the employer, entails along with the disciplinary actions provided for by the LC of the RF, application of disciplinary actions, such as: (a) severe reprimand, (b) professional impropriety notice, (c) termination of the employment contract for one-time commission of one of the breaches provided for in Art. 61 of the Federal Law "On the use of atomic energy" of November 21, 1995[2], if the effects of this breach threaten

[1] Statute on discipline of employees of organizations operating particularly radiation-hazardous and nuclear-hazardous production and facilities in the field of atomic energy use (approved by Federal Law of the RF No. 35-FZ of 8 March 2011. *Collection of FR Legislation*, no. 11, 2011. Art. 1504.

[2] Federal Law on the use of atomic energy No. 170-FZ of 21 November 1995. *Collection of FR Legislation*, no. 48, 1995. Art. 4552.

the safe function of the operating organization and endanger the life and health of citizens and the environment.

These breaches are:

– breach of provisions and rules in the field of atomic energy use;

– breach of the terms and conditions of permits (licenses) for the right to conduct work in the field;

– failure or improper performance of instructions of State safety regulatory authorities;

– carrying out works at a nuclear installation, at a radiation source and at a storage point, as well as handling nuclear materials and radioactive substances without the specified permit;

– non-compliance with the requirements for the location of the nuclear installation, radiation source and storage point of such materials and substances;

– delivery, installation and commissioning of faulty equipment of the nuclear installation, radiation source and storage point;

– non-fulfilment of their official duties by employees of the nuclear installation, radiation source and storage point;

– quitting on their own of a nuclear installation, radiation source or storage point by the workers from the shift on duty;

– non-fulfilment of their official duties by the persons in critical situations which has entailed or could have entailed human victims, the unwarranted irradiation or the radioactive contamination of the environment;

– access to the work in a nuclear installation, radiation source or storage point of the workers without relevant documents certifying the skill of the workers with medical contra-indications for the work in said facilities, and also of the persons below 18 years of age;

– direct or indirect compulsion of workers by the officials to breach the regulations and instructions on the

operation of a nuclear installation, radiation source or storage point;

– evasion of officials and other workers from the discharge of their duties according to the applicable plan for the protection of the workers engaged in the facilities using atomic energy and of the population in cases of accidents;

– sending by the official of the workers employed in the facilities using atomic energy to the dangerous radiation zones with the possible excess of the dose limits and the admissible levels of radiation without the consent of said workers and without informing them about the possible levels of irradiation, and also with breach of the standards, rules and instructions provided for these conditions;

– unjustified or intentional release or discharge of radioactive substances to the atmosphere, water or subsoil in quantities exceeding the maximally admissible levels;

– concealment of an accident or breach of the procedure for informing about the accident in the nuclear installation, radiation source or the storage point;

– the concealment of information about the radiation contamination of the environment, as well as the issue of deliberately false information about the radiation situation in the said facilities;

– breach of the existing order of accounting and control of nuclear and radioactive substances;

– participation in the organization and conduct of non-sanctioned public arrangements in the territory of a nuclear installation, radiation source or storage point, etc.

Article 86 of the Labour Code of the Republic of Moldova [1] recognizes one-time gross breach of official powers by the head of the enterprise, his/her deputies or the chief accountant as a special ground for dismissal. As a general rule, the employer is required to notify the employee by the

[1] Labour Code of the Republic of Moldova (approved by Law of Republic of Moldova No. 154 of 28 March 2003). *Monitorul Oficial*, no. 159–162, 2003.

order (regulation, decision, resolution) under the receipt of his/her intention to terminate an individual employment contract concluded for a definite or indefinite period, within the time limits prescribed by law. However, upon termination of an individual employment contract on the grounds under consideration, notification is not required. It should be noted that this Code allows the employer to terminate the employment contract with employees due to a change of ownership. In this case, the new owner not later than within three months from the date of ownership, has the right to terminate the individual employment contract concluded with the head of the enterprise, his/her deputies, the chief accountant. The new owner pays the persons discharged additional compensation, if it is provided by the individual employment contract.

According to Art. 43 "Additional grounds for termination of employment contract with certain categories of employees" of the Labour Code of Turkmenistan, an employment contract can be terminated in case of one-time gross breach of work duties by the head of the enterprise (unit), his/her deputies and employees who are disciplinary liable according to the Statute of the latter.

According to Art. 235 of the Labour Code of the Republic of Lithuania [1], gross breach of work duties is a disciplinary misdemeanour, which grossly violates the provisions of laws and other legal regulations that directly regulate the work of the employee, or a gross deviation from work duties or the established work schedule. Gross breaches of work duties are:

– inadmissible treatment of visitors or interested parties or other actions that directly breach constitutional human rights;

[1] Labour Code of the Republic of Lithuania (approved by Law of Republic of Lithuania No. IX-926 of 4 June 2002). http://www.vbfondas.lt/upload/LR_darbo_kodeksas.htm.

– disclosure of state, official, commercial or technological secrets or informing to a competing enterprise;

– participation in activities that in accordance with the provisions of laws, other regulations, rules of labour regulations, collective or employment agreements are not consistent with the employment function of the employee;

– jobbery in order to obtain illegal income for themselves or others, for other personal reasons, as well as arbitrariness and bureaucracy;

– breach of equality between men and women or sexual harassment in relation to interested parties or subordinates;

– refusal to provide information when laws, other legal regulations or rules of labour regulations require to provide it, or provision in such cases of knowingly false information;

– acts with aspects of theft, fraud, misappropriation or embezzlement of property, unlawful receipt of wages, although for them the employee has not been prosecuted or administratively liable;

– appearing during working hours on working place in a state of alcoholic, narcotic or other intoxication, except in cases when intoxication has been caused by production processes taking place at the enterprise;

– absence from work without good reason throughout the working day (shifts);

– refusal from health check, when it is mandatory for the employee;

– other misdemeanours, which grossly breach the work schedule.

The Labour Code of the Czech Republic[1] does not use a wording "one-time gross breach of work duties» but has Chapter 10 "Resignation or dismissal from a managerial

[1] Shugaev, A. A., Kisterev, D. D. *Labour Codes of the Czech Republic and the Russian Federation: Comparative legal analysis*. M.: RITS ISPI RAN, 2010. 344 p.

position". The head of a State department can be dismissed from office by a person (body) authorized to do so by a legal regulation, and the head of an office of a State department can be dismissed only by the head of the department or an authorized body.

If the employer is a legal or natural person, this employer can simply agree with his/her employee who holds a managerial position on the need to dismiss him, provided that the parties agree at the same time that this employee can resign him/herself. The term "managerial position" in this case means: (a) a position directly subordinate to the governing body provided for by the Statute, if the employer is a legal entity, the employer, if it is a natural person; (b) a position directly subordinate to a member of senior management, if the employer is a legal entity and provided that the lower-level manager is subordinate to the person holding that senior position.

If the employer is a legal entity, the employee holding managerial position can be dismissed only by the governing body specified in the Statute; and if he/she is a natural person, the manager may be dismissed only by that person-employer.

The notice of termination or statement of resignation shall be made in writing and delivered to other party, otherwise they will be considered invalid. An employee's term of office ends the day after such notice or statement is delivered to the other party, unless they specify a later date.

In the countries of the Anglo-Saxon law (USA, Great Britain, Ireland, Canada, New Zealand) the head of the enterprise is not considered as an employee. He/she is outside the scope of labour law and performs his/her functions on the basis of a contract of a civil nature. I. Ya. Kiseliov argues that in the Western countries the contract with managers is labour one, because it is characterized by such features as timeliness, written form, features of determining the job

function, simplified dismissal (especially in connection with loss of confidence, reaching the age limit) etc. [1].

However, the scientist's arguments concern only the management of the organization of the middle and lower echelons. In 1963 Decision of the Court of Appeal of Great Britain states that the president, vice-president, director, executive director of the company are not employees. The labour courts of this State consider cases of unlawful dismissal only in respect of secondary management personnel. It makes sense to agree with M. V. Demidov that the essence of the relationship between senior management and the employer corresponds rather to the construction of civil representation [2]. According to O. H. Sereda, a legal entity as a supra-personal entity that realizes its rights and responsibilities through a mediation of a number of persons whose actions, by virtue of law and the constituent documents, are considered as actions of the organization itself [3]. As a result, the use of the term "dismissal" in relation to such subjects is inappropriate. Termination of employment occurs at the discretion of the owner of the organization on the grounds specified in the civil contract.

The results of a comprehensive study in this sub-section of the monograph enable to make conclusions of significant theoretical and applied significance.

1. In the world two key approaches to the legal regulation of labour activity of the head of the organization: (a) in the countries of the Anglo-Saxon law the head is not considered as an employee, but is outside the scope of labour law and performs his/her functions on the basis of a contract

[1] Kiselev, I. Ya. *Comparative and international labor law*. M.: Delo, 1999. 728 p.

[2] Demidov, N. V. *Dismissal on the initiative of the employer*. Ph.D.'s thesis. Tomsk State Ped. Un-ty. Tomsk, 2009. 229 p.

[3] Sereda, O. H. *Employer as a subject of labor law*. Ph.D.'s thesis. Yaroslav Mudryi National Law University. – Kh., 2004. 210 p.

of a civil nature. As a result, the use of the labour law term "dismissal" in relation to such subjects is inappropriate. Termination of employment relationship occurs at the discretion of the owner of the organization on the grounds specified in the civil contract; (b) in the countries of the continental law the head, considering the work function he/she performs and duties assigned to him/her, has the status of an employee, though specific.

2. If the head of the organization is considered as a subject of labour law, the possibility of this dismissal in case of one-time gross breach of work duties is provided for either by (a) provisions of the Labour Code of the country and other legal regulations containing provisions of labour law (post-Soviet states), or (b) the terms and conditions of the individual employment contract (Bulgaria, Estonia, Latvia, Germany, the Czech Republic and others).

3. The labour legislation of foreign countries recognizes mainly the head of the organization and his/her deputies as the subject of termination of the employment contract at the initiative of the employer in case of one-time gross breach of work duties. Occasionally, they include the heads of separate structural units (their deputies), chief accountants (their deputies), employees covered by statutes and regulations on discipline.

4. Although the construction "gross breach of work duties" is evaluative and remains at the discretion of the court, employer or other law applier, legal regulations or individual employment contracts often provides for interpretations of its use. The grounds for dismissal cannot be non-performance of any actions, which are not duties of the subjects of dismissal.

5. Dismissal on the grounds under consideration is a disciplinary action, therefore, the legal provisions regarding the procedure and terms of bringing a guilty person to disciplinary liability should be complied with.

If (as a general rule) the employer is obliged to notify the employee by order (directive, decision, resolution) under the receipt of his/her intention to terminate the individual employment contract within the period prescribed by law, termination of the employment contract on the grounds of notification is not required. Severance pay or any other pecuniary compensation is not paid to the dismissed person. In addition, the employer does not have any responsibilities for his/her employment.

Conclusions to Chapter 2

The comparative study of the legal regulation of termination of the employment contract in case of one-time gross breach of work duties by a worker enabled to make certain scientific and theoretical conclusions and formulate proposals as follows:

1. The factory law regarded the manager (administrator) as a fairly independent figure. For example, fines for breach of this law were levied on him personally, and only when the manager did not pay the fine for 2 weeks, the penalty was sent to the owner. The latter's right to dismiss the manager was not limited by law, as the agreement between him and the manager was considered civil. The regulation of the labour activity of the manager as an employee is not reflected in law. Wherever employment, working conditions, dismissal, etc. are revealed, only workers are mentioned.

2. The formation and development of legal regulation of the termination of the employment contract in case of worker's one-time gross breach of work duties includes the periods as follows:

The 1st (1928–1969) – the stated ground for dismissal is launched for managers and other decision makers, taking into account the nature of their work function. The

lists of decision makers were initially established by the People's Labour Commissariats of the USSR and the Union Republics upon the approval of the All-Union Central Council of Trade Unions and the Republican Soviet of Trade Unions, and later by the Presidium of the Verkhovna Rada or the Council of Ministers. At different times, these employees include not only the heads of enterprises, their deputies and assistants, chief engineers, chief physicians, chief accountants, heads of workshops, masters, construction site supervisors, also but prosecutors and investigators; teaching staff of higher educational institutions and employees of research institutions, elected employees, instructors, inspectors, managers of trade union departments; artists and other creative workers. In the 60s of the twentieth century, dismissals for one-time gross breach were applied to certain categories of employees, subject to the regulations and statutes on discipline (railway workers, workers and employees of the coal industry).

The dismissal did not become an obstacle to the prosecution of a guilty person regarding the same breach. It could be appealed in the chain of command directly to the next higher authority or a higher official. All decisions on complaints were considered final and reviewed only under the supervision by the next higher authority.

The 2nd (1970–1990) – for the first time, the Principles of Labour Legislation of the USSR and the Union Republics and in the LC of the USSR provide for one-time gross breach of work duties by employee, subject to disciplinary liability in the chain of command, as a separate special ground for their dismissal. The categories of employees, subject to disciplinary liability in the chain of command were determined by the special List, approved by the Presidium of the Supreme Council of the USSR. Compared to the previous period, this List additionally included employees with diplomatic ranks, as well as diplomatic couriers, referents of the

Ministry of Foreign Affairs of the USSR, employees of public organizations, approved for the position by a collegial body; employees of the Main Customs Department of the Ministry of Foreign Trade of the USSR and other customs institutions of the USSR who have personal ranks, employees of the Main Department for Foreign Tourism, inspectors and engineers-inspectors of the bodies of the State Mining and Technical Supervision, etc. However, teaching staff of higher educational institutions and employees of research institutions, as well as artists and other creative workers are excluded from the scope of these legal regulation provisions.

The current LC, together with the category under study, provides for the term "explicit breach of law." An official guilty of unlawful dismissal of an employee with explicit breach of law is required to compensate the damage caused to the enterprise, institution, in connection with payment for the period of forced truancy. The explicit breach of law was dismissal of: (a) an employee without the consent of the trade union committee or on grounds not provided by law; (b) a people's deputy without the consent of the relevant Council, and between sessions, of the Executive Committee of the Council of People's Deputies or the Presidium of the Verkhovna Rada; (c) the head of the people's control group of the enterprise without the consent of the district, city, district in the city committee of people's control; (d) women in cases provided by law, when the administration was aware of the existence of circumstances that preclude the possibility of their dismissal; (d) workers and officials under the age of 18 without the consent of the district (city) commission on underage persons.

In the 70's and 80's of the twentieth century, much more sectors of the national economy adopted Statutes on discipline. The latter provided for that the special ground for termination of the employment contract was committing gross breach of work duties. This ground concerns

employees of the State Customs Control, workers employed in particularly dangerous underground conditions, employees of the Ministry of Atomic Energy, workers and employees of ships supporting the navy, etc. During the period of temporary disability, as well as the stay of employees on leave, their dismissal on this basis was not allowed.

The 3rd (1991 until present) – on March 20, 1991, the owner or his/her authorized body was given the right to terminate the employment contract with the heads of the enterprise in case of one-time gross breach of their work duties. Subsequently, this right became modern and extended to the heads of enterprises and their separate divisions, the heads, deputies, chief accountants, their deputies, as well as to the officials of the revenue and duties bodies nominated for special ranks, and officials of central executive bodies implementing national policy in public financial control and price control. A commission of guilty acts by the head of the enterprise as an independent ground for termination of the employment contract, as a result of which wages were paid late or in the amount lower than the statutory minimum wage, was singled out of one-time gross breach of work duties by this subject.

Legislation, statutes, and regulations on discipline continue to use the construction "one-time gross breach of work duties". Termination of the employment contract on this ground is carried out without the consent of the elected body of the primary trade union organization (trade union representative).

Labour disputes on the applications of the head of the enterprise and their deputies on dismissals are directly considered in the district (city) courts.

3. In the world two key approaches to the legal regulation of labour activity of the head of the organization: (a) in the countries of the Anglo-Saxon law the head is not considered as an employee, but is outside the scope of labour

law and performs his/her functions on the basis of a contract of a civil nature. As a result, the use of the labour law term "dismissal" in relation to such subjects is inappropriate. Termination of employment relationship occurs at the discretion of the owner of the organization on the grounds specified in the civil contract; (b) in the countries of the continental law the head, considering the work function he/she performs and duties assigned to him/her, has the status of an employee, though specific.

4. If the head of the organization is considered as a subject of labour law, the possibility of this dismissal in case of one-time gross breach of work duties is provided for either by (a) provisions of the Labour Code of the country and other legal regulations containing provisions of labour law (post-Soviet states), or (b) the terms and conditions of the individual employment contract (Bulgaria, Estonia, Latvia, Germany, the Czech Republic and others).

5. The labour legislation of foreign countries recognizes mainly the head of the organization and his/her deputies as the subject of termination of the employment contract at the initiative of the employer in case of one-time gross breach of work duties. Occasionally, they include the heads of separate structural units (their deputies), chief accountants (their deputies), employees covered by statutes and regulations on discipline.

6. Although the construction "gross breach of work duties" is evaluative and remains at the discretion of the court, employer or other law applier, legal regulations or individual employment contracts often provides for interpretations of its use. The grounds for dismissal cannot be non-performance of any actions, which are not duties of the subjects of dismissal.

7. Dismissal on the grounds under consideration is a disciplinary action, therefore, the legal provisions regarding the procedure and terms of bringing a guilty

person to disciplinary liability should be complied with. If (as a general rule) the employer is obliged to notify the employee by order (directive, decision, resolution) under the receipt of his/her intention to terminate the individual employment contract within the period prescribed by law, termination of the employment contract on the grounds of notification is not required. Severance pay or any other pecuniary compensation is not paid to the dismissed person. In addition, the employer does not have any responsibilities for his/her employment.