CONCLUSIONS

The monograph provides a theoretical generalization and an original response to the scientific challenges, that is, the analysis of scientific and theoretical achievements of legal scholars the study of international legal standards, review of national and foreign legislation enable to formulate a number of conclusions and proposals with regard to establishing the legal nature of gross breach of work duties by an employee, determining of their place in the system of additional grounds for termination of the employment contract at the initiative of the employer, clarifying the current status of regulatory and legal application and practice in this field, as well as with regard to preparing recommendations for improvement. The following most important conclusions are made.

1. Work duties of the worker as a party to the employment relationship is a system of requirements defined by legislative and local acts in the field of labour regarding specified behaviour of the employee in the course of the work under the employment contract, due to the interests of the employer and state-guaranteed coercive measures. The system of work duties of employees includes:

a) general work duties for all without exception, employees, regardless of the legal status, ownership, industry affiliation, subordination and other features of employers for whom they work under an employment contract;

b) special sectoral ones for workers covered by employed in enterprises, institutions and organizations engaged in a particular type of economic activity in the sectors of tangible or intangible production;

c) direct production and functional ones for the worker within his/her employment function by the employer in accordance with the employment contract concluded between them.

2. The essential features of the category "gross breach of work duties" as a labour law phenomenon include: (a) this breach has caused or could cause substantial pecuniary and non-pecuniary damage to the rights or interests of employees, employers or the State; (b) this category is an evaluative concept; (c) subjects of this breach are special categories of employees defined by law; (d) this offense is a disciplinary misdemeanour; breach can entail dismissal of the employee at the initiative of the employer.

3. Gross breach of work duties is the unlawful conduct of categories of workers defined by law, as a result of which other workers of the enterprise, institution, organization, the employer or the State have suffered or could have suffered substantial pecuniary and non-pecuniary damage; and which may entail the application, in the prescribed manner, of disciplinary action, including dismissal, to the guilty person. Scientific and regulatory approaches to a legislative and scientific-theoretical distinction into one-time gross breach of work duties by employees in general and individual categories of workers (the head of the organization (sub-office, representative office), his deputies, officials who are subject to the requirements of disciplinary statutes, etc.), as well as to recognition of all cases of one-time commission of unlawful behaviour by these persons, which can entail dismissal at the initiative of the employer, as gross breach of work duties by workers, are inappropriate. This due to the fact that it implies a substitution of categories, a basis for confusion and, in the end, law application suffers. More logical and balanced further use of two legal categories (both in labour law study and in labour law) should be as follows: (a) one-time

substantive breach of work duties, in relation to employees in general and (b) one-time gross breach of work duties, in relation to special categories of workers.

4. In order to specify the evaluative concept of "gross breach of work duties," and therefore to facilitate the law application, it should be legislated that gross breach of work duties occurs in the cases when pecuniary damage caused by illegal behaviour of the worker exceeds a certain minimum legally fixed (for example, 10 minimum wages), and non-pecuniary one – if the violation of rights and interests not only led to moral suffering, loss of normal life connections and for additional efforts to organize the life of an individual employee, but also caused a deterioration of the image and credibility of an individual enterprise, institution or organization and the relevant service in general.

It is not contrary to the current labour law if the evaluative concept under study is specified directly in the local acts of the enterprise or in the employment contract by stating the specificities established, such as (a) losses incurred by the employer, payment of fines; (b) breach of law in financial utilization; (c) failure to pay taxes, fees and mandatory payments; (d) breach of the procedure for settlements; (e) permitting of growth of overdue accounts payable; (f) failure to submit financial statements.

5. Formation and development of legal regulation for termination of the employment contract in the case of one-time gross breach by the employee of his/her labour duties includes 3 key periods: (a) 1928–1969; (b) 1970–1990 and (c) 1991– to the present. The key features of each of these stages are singled out.

6. 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.

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).

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. 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. Therefore, there are no laws and logic in the separation by the legislator of revenue and duties officials, nominated for special ranks, as well as officials of central executive bodies implementing national policy in public

financial control and price control, as subjects of dismissal for one-time gross breach of work duties. Moreover, this step of the legislator seems to have no proper and weighty justification. For example, it is unclear why the subjects, covered by paragraph 1 of Art. 31 the LC of Ukraine, involve officials of the State Financial Inspection of Ukraine, while officials of the State Treasury Service of Ukraine or the State Service of Financial Monitoring of Ukraine are not included in this category. Although, it would seem, the objectives performed by these three public institutions are somehow similar, as well as the powers entrusted to them. In addition, the separation of officials of the central executive body, which implements the national policy in the field of price control, does not correspond to the current situation, after all: on September 10, 2014, in order to optimize the system of central executive bodies and in accordance with paragraphs 9 and 9-1 of Art. 116 of the Constitution of Ukraine, the Cabinet of Ministers of Ukraine decided to liquidate the State Inspectorate for Price Control, entrusting the functions of monitoring the dynamics of prices (tariffs) in the consumer market to the State Statistics Service.

Under these circumstances and in view of the experience of foreign countries, it seems prudent to extend the scope of para. 1 of Art. 41 of the LC of Ukraine to officials of the sectors of the economy subject to Statutes on discipline (prosecutor's offices, railways, mining companies, etc.).

8. The introduction of the position of a chief accountant in the staff list of the enterprise is possible in case of creating an appropriate structural division. Based on the fact that most enterprises in Ukraine are small, that to ensure accounting, they are often limited to the introduction in the staff only a position of an accountant, rather than the creation of an accounting department headed by the chief accountant, therefore, according to Art. 8 of the Law "On accounting

and financial reporting in Ukraine", para. 1 of Art. 41 of the LC of Ukraine should cover not only the chief accountants of enterprises, institutions, organizations, their deputies, but also the persons responsible for accounting of the business entity.

9. The issue of whether the head of the structural division of a legal entity belongs to employees with whom the employment contract can be terminated due to one-time gross breach of work duties, requires considering both property and territorial separation of the division headed by him/her, as well as the fact that according to Art. 64 of the Economic Code of Ukraine, the enterprise has the right to create suboffice, representative office, branch, other separate division, coordinating issues as to their location with relevant local governments. Provisions of the Civil Code of Ukraine do not prevent legal entities from creating separate divisions not only in other settlements, but also in the same settlement where the legal entity is located. It is only important that this division is property-separated. Such divisions do not have the legal entity status, and act on the basis of a relevant provision, approved by an enterprise. The person who heads such division and performs organizational and administrative functions have the status of "the head of a separate division.

10. One-time gross breach of work duties is a type of breach of labour discipline by an employee, therefore, the law application body should establish more specifically what this breach was, whether it could be grounds for termination of the employment contract under para. 1 of Art. 41 of the LC of Ukraine and which legal requirements regarding timing and procedure for applying disciplinary actions should be observed. The law application body can find breach of work duties gross, based on the nature of a misdemeanour, circumstances whereby it was committed, the damage caused or could have been caused by the employee. Moreover, this

should be one-time, not ongoing breach of work duties, which may entail the application of disciplinary actions on other grounds. In other words, if breach is long-term (for example, weakening or lack of control over the work of subordinates), and is not one-time, the dismissal under para. 1 of Art. 41 of the LC of Ukraine is impossible.

11. Disciplinary action does not apply: a) in case of absence of the employee at work due to temporary incapacity; b) during the stay of employees on leave or business trip; c) during an official investigation.

12. The key differences between termination of the employment contract in the case of one-time gross breach of work duties (para. 1 of Part 1 of Art. 41 of the LC) and termination of the employment contract with the head at the request of the elected body of the primary trade union organization (trade union representative) (Art. 45 of the LC of Ukraine) are:

a) the former occurs at the initiative of the employer, while the initiator of the latter is the elected body of the primary trade union organization (trade union representative);

b) the first is the ground for dismissal of the head of the enterprise or a separate division, his/her deputies, the chief accountant of the enterprise, his/her 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, and the second – only of the head of the legal entity;

c) the ground for termination of the employment contract in the first case is one-time gross breach of work duties, in the second – breach of laws on labour, collective agreements and contracts, the Law of Ukraine "On trade unions, their rights and guarantees of activity". Moreover, in the second case, breaches concern labour rights and guarantees of their provision for all or most employees of the enterprise;

d) dismissal on the first ground is a disciplinary action, and on the second, it is not such an action;

e) in the first situation, dismissal is the right of the employer, who may not use it, in the second, the latter is obliged to terminate the employment contract.