

**TO
THE SCIENTIFIC JURY FOR CONDUCTING
A DEFENCE FOR ACQUIRING
THE SCIENTIFIC DEGREE
OF ‘DOCTOR OF SCIENCE’
PROFESSIONAL FIELD 3.6 LAW
HIGHER EDUCATION DOMAIN
3. SOCIAL, ECONOMIC
AND LEGAL SCIENCES**

OPINION

**given by Prof. Malina Nikolova Novkirishka-Stoyanova, DSc
Lecturer at the New Bulgarian University
Scientific domain 3. Social, Economic and Legal Sciences
Professional Field 3.6 Law
Specialty ‘Roman private law’**

Re: Dissertation for awarding the scientific degree of ‘Doctor of Science’ on the topic: ‘Unpaid Leave under Art. 160, Para. 1 of the Labour Code’ by Ivaylo Ivanov Staykov, Doctor of Law, Associate Professor at NBU

Dear members of the scientific jury,

I am presenting the Opinion prepared by me in connection with the procedure for awarding the scientific degree of ‘Doctor of Science’ to Assoc.Prof. Dr. Ivaylo Ivanov Staykov, author of dissertation ‘Unpaid Leave under Art. 160, Para. 1 of the Labour Code’ on the grounds of **my appointment as a reserve member of the scientific jury** in accordance with Order No 3-PK-17 of 05.10.2022 of the Rector of NBU on the grounds of Decision of the Academic Board 1/27.09.2022. I am stepping in as an internal member of the jury after the refusal of Prof. Rayna Nikolova, DSc of 11 January 2023 to participate as a member of the jury.

Ivaylo Staykov graduated from the Law Faculty of Sofia University ‘St. Kliment Ohridski’ in the year 1994. In 2003 he acquired the educational degree of ‘Master in Finance’ at the University of Veliko Tarnovo ‘St.St. Cyril and Methodius’. He also acquired a PhD in Law in 2006. He has passed through all academic positions at NBU, and since November 2011 he has been an Associate Professor of Labour Law and Social Security at the same university. He has extensive practical experience as a legal adviser, lawyer and consultant of various institutions and organizations. He is a member of a number of international and national organizations, committees and councils in the field of labour law and social legislation, professional ethics, consumer protection, etc.

In connection with the presented dissertation ‘Unpaid Leave under Art. 160, Para. 1 of the Labour Code’ consisting of 366 pages divided into Introduction, 5 chapters with a total of 24 paragraphs, Conclusion and Bibliography of the literature used, I express the following opinion:

1. SIGNIFICANCE OF THE RESEARCH PROBLEM IN SCIENTIFIC AND APPLIED TERMS

Ivaylo Staykov’s dissertation is the first comprehensive study in Bulgarian legal literature which examines unpaid leave under Art. 160, para. 1 of the Labour Code that is in force in Bulgaria. This is a particularly important issue of great practical importance and its theoretical study is a prerequisite for the proper implementation of legislation and the resolution of a number of practical issues related to the constitutional right to work, rest and leave.

The dissertation contains an analysis of the legal nature of unpaid leave under Art. 160, para. 1 of the Labour Code, outlining its legal characteristic and its relationship with paid leave, and making a classification of the types of unpaid leave based on different classification criteria. The issue is studied in a complex way, and different points of view and positions of both the authors exploring this aspect of labour law and the judicial practice are presented. What should be noted is the author’s systematization of the problems regarding the lawful application of the legal framework of unpaid leave under Art. 160, para. 1 LC and related regulations.

From this point of view, the dissertation has its significance that is multi-layered and presented in an adequate scientific way by the author. In addition, the dogmatic analysis is not conducted unidirectionally, and proposals *de lege ferenda* are made, some of which are important for shaping the social policies of the future Bulgarian government. The dissertation fully meets the requirements of Art. 12, para. 4 of the Law on Academic Staff Development in the Republic of Bulgaria (LASDRB): it contains theoretical generalizations and solutions to important scientific and applied scientific problems that fully correspond to modern achievements and represent a significant and original contribution to labour law science.

2. SUBSTANTIATION FOR THE DISSERTATION OBJECTIVES AND TASKS

In the dissertation, the objectives and tasks pursued by the author are clearly set and substantiated. The main objective, namely, to study the legal nature of unpaid leave under Art. 160, para. 1 LC through scientific analysis of the current legislation, theoretical developments and empirical material has been completely achieved. The so-called ‘secondary objective’ – making proposals *de lege ferenda* for improving national legislation – is also fulfilled, which demonstrates the author’s pragmatic approach, knowledge of the matter and judicial practice and the correct identification of the problematic points that need their legislative solution.

The main tasks the author sets consist of the study of those norms of the current labour law which govern the unpaid leave under Art. 160, para. 1 LC, the characterization of the concept of ‘unpaid leave’ and the corresponding distinctions from other types of leave, the internal classification of this type of leave and a detailed follow-up of the available judicial practice on various aspects of the application of the relevant legislation. The dissertation contains solutions to the tasks thus set and, in some aspects, the exposition goes beyond their outlines and approaches some more global issues of labour law.

3. CORRESPONDENCE BETWEEN THE CHOSEN METHODOLOGY OF RESEARCH AND THE OBJECTIVE AND TASKS SET IN THE DISSERTATION

The methodological basis of the dissertation consists of a complex of traditionally used general scientific and special methods for conducting legal research (systematic-structural, dialectical, legal and historical methods, the method of induction and deduction, the statistical method of observation, the method of exclusion, etc.). The methods of interpretation in law, the logical means of overcoming gaps in law as well as the method of comparative law analysis of foreign legislation are also used.

The dissertation shows good knowledge of legal dogmatics, and what is particularly important is the author's ability to build a scientifically based analysis of the current legal framework and its application in practice, as well as an analysis of the problems emerging due to contradictory understanding, ambiguities or gaps in the legislation.

It can be concluded that there is a correspondence between the chosen methodology of research and the objective and tasks set in the dissertation.

4. SCIENTIFIC AND APPLIED SCIENTIFIC CONTRIBUTIONS OF THE DISSERTATION

The dissertation deals with a scientific issue which is specific and seemingly narrow in scope – one of the types of unpaid leave, namely that under Art. 160, para. 1 of the Labour Code, however, it opens up rich opportunities for analysis and conclusions regarding the existing legislation and the development of the practice on it. I would not undertake to comment on the scientific contributions of the author in a matter in which I am not an expert, but, in general, I can mark some of them:

- the analysis presented on p. 30 *et seq.* concerning the connection between employment and service legal relationships, incl. the author's thesis of a complex legal relationship in which an employment relationship is included, as well as the conclusion drawn on p. 36 regarding the unpaid leave of civil servants under the law of the same title;
- the legal mechanism under which the leave-legal possibility of the employee, a typical representative of which is the unpaid leave under Art. 160, para. 1 of the Labour Code, becomes a subjective labour right of the employee. After the employee's request for such leave, there arises a legal expectation which becomes a subjective right at the time the employer authorizes the leave (gives his consent) and the agreement is concluded. An original scientific novelty in the Bulgarian labour law literature is the thesis of the so-called 'transformation' of the leave under Art. 160, para. 1 LC into a subjective right by virtue of an agreement between the parties to the employment relationship (§ 6 of Chapter II);
- the identification of the type of entitlement to leave as a subjective transformative right (pp. 111-116);
- the analysis of the so-called 'reflexive (side)' legal consequences in the use of unpaid leave under Art. 160, para. 1 LC (p. 117 *et seq.*);
- the classification of the types of unpaid leave under the current legislation on the basis of different classification criteria.

In accordance with the requirements of the LASDRB, along with the clarification of theoretical issues and the comparison of the legal framework with the judicial and administrative practice, there is one more major contribution of the dissertation, namely, the numerous proposals *de lege ferenda* for improvement of labour and social security legislation, which are

appropriately systematized in the Conclusion of the dissertation (pp. 289-291). It should be noted that the said proposals are specific and well grounded by the author and can form the basis of a more extensive programme for the development of legislation.

5. ASSESSMENT OF THE PUBLICATIONS RELATING TO THE DISSERTATION: ISSUE AND NATURE OF THE EDITIONS IN WHICH THEY ARE PUBLISHED

The results of the scientific study of unpaid leave under Art. 160, para. 1 of the Labour Code (theoretical provisions, generalizations and conclusions), some other aspects of the leave as an institute of labour law, as well as various individual issues of labour law and social security law were presented at national scientific conferences and subsequently published in collections of scientific reports. The main points and results of the dissertation research are reflected in 15 scientific studies and articles in scientific journals and proceedings of scientific conferences held at various universities in Bulgaria. It is noteworthy that the scientific results of the cited articles and reports are systematized, enriched and summarized in the dissertation, and they do not duplicate the scientific contributions of the dissertation.

6. CITATION BY OTHER AUTHORS, REVIEWS IN THE SCIENTIFIC PRESS, ETC.

The scientific work ‘Unpaid Leave under Art. 160, Para. 1 of the Labour Code’ and other publications on the topic are cited in 8 monographs and collective volumes with scientific review by 12 authors, including by the leading labour jurists in Bulgaria: Prof. Vasil Mrachkov, DSc, Prof. Dr. Krasimira Sredkova, Prof. Dr. Nina Gevrenova.

7. OPINIONS, RECOMMENDATIONS AND REMARKS

Along with the discussion of the dissertation of Assoc.Prof. Dr. Ivaylo Staykov, I would like to note his extremely fruitful scientific activity, which is reflected in over 200 scientific and scientific-practical publications. Among them are three monographs, dozens of studies and articles. In addition to being a specialist in the field of labour and social security law, in recent decades Assoc.Prof. Staykov has also appeared as a prolific author of numerous articles and studies focused on various institutes of commercial and civil law. Indicative is the fact that over 90 of Ivaylo Staykov’s scientific publications have been repeatedly cited by over 65 authors. He has participated with reports in more than 100 scientific forums in Bulgaria and abroad.

In my capacity as a lecturer of Assoc.Prof. Dr. Ivaylo Staykov at the time of his studies at the Law Faculty of Sofia University ‘St. Kliment Ohridski’, and as his colleague in the Department of Law at NBU, I can confidently say that he is a thorough, precise, conscientious scientist with a broad vision of labour and social security law, and also with vast knowledge of legal science in general. I can also note his accuracy and devotion as a lecturer, and his desire and ability to provoke the students’ interest in the studied matter and to deepen their knowledge through various extracurricular forms of study and personal communication.

I believe that both the monograph published in 2016 by the publishing house ‘Avangard Prima’ in Sofia and the dissertation enriched with theoretical and practical analyses are in full compliance with the requirements of the Law on Academic Staff Development in the Republic of Bulgaria.

I would like to avoid using the traditional recommendations that are usually made for authors of dissertations, but it seems to me that, although the title of the discussed work is

identical to the book of 2016, it is worth being published again, taking into account the latest changes in the legislation, as well as the scientific discussion in the legal literature, which is caused by some of the theses of the author. In this new edition of the scientific work, it is desirable to develop the comparative law method of research, which is now limited to one foreign legislation only, although the work is aimed at being useful for Bulgarian lawyers and a wider scope of readers. It is at least in this direction that European law can be analyzed, as well as some useful solutions in the practice of other countries and the possible disputes arising at the level of European judicial practice.

8. CONCLUSION

On the grounds of the aforesaid, I categorically give my positive evaluation of the dissertation and propose to the scientific jury to award the scientific degree of ‘Doctor of Science’ to Assoc.Prof. Dr. Ivaylo Ivanov Staykov, for which I will convincingly vote.

27 January 2023

.....
Prof. Malina Nikolova
Novkirishka-Stoyanova, DSc